



District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public roundtable on the “Nomination of a new Chancellor for D.C. Public Schools”
- Office on Aging announces funding availability for the Fiscal Year 2017 Senior Villages Competitive Grant
- D.C. Board of Elections updates standards for tabulating write-in votes and recount procedures
- Department of Health Care Finance notifies public of Medicaid Fee Schedule updates
- Office of the State Superintendent of Education updates minimum requirements for child development facilities
- Office of the State Superintendent of Education schedules community meetings to discuss the child development facilities licensing regulations
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2017 Adult and Family Education Program Grant

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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. 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.).

All documents published in the *District of Columbia Register* (*Register*) must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *Register* include (1) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the D.C. government (6) Notices, Opinions, and Orders of D.C. Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

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The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THURSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

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Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act*. The Administrator of the Office of Documents and Administrative Issuances hereby certifies that this issue of the *Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act*.

DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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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.

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

PROPOSED RESOLUTIONS

PR21-1025 District of Columbia International School Revenue Bonds Project Approval Resolution of 2016

Intro. 11-16-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

PR21-1026 Board of Nursing Amanda Liddle Confirmation Resolution of 2016

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

PR21-1027 Board of Nursing Elizabeth Lamme Confirmation Resolution of 2016

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PR21-1028 Board of Nursing Meedie Bardonille Confirmation Resolution of 2016

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

- PR21-1029 Board of Pharmacy Benjamin E. Miles Confirmation Resolution of 2016
Intro. 11-16-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services
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- PR21-1030 Board of Industrial Trades Terrence Hughes Confirmation Resolution of 2016
Intro. 11-16-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole, Subcommittee on Boards and Commissions
-
- PR21-1031 District of Columbia International School Qualified Zone Academy Revenue Bonds Project Approval Resolution of 2016
Intro. 11-16-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue
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- PR21-1032 Local Rent Supplement Program Contract No. 2015-LRSP-02A Approval Resolution of 2016
Intro. 11-17-16 by Chairman Mendelson at the request of the District of Columbia Housing Authority, and Retained by the Council with comments from the Committee on Housing and Community Development
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- PR21-1033 Local Rent Supplement Program Contract No. 2015-LRSP-01A Approval Resolution of 2016
Intro. 11-17-16 by Chairman Mendelson at the request of the District of Columbia Housing Authority, and Retained by the Council with comments from the Committee on Housing and Community Development
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- PR21-1037 Emergency Medical Services Regulations Amendment Approval Resolution of 2016
Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
-

PR21-1038 Marijuana for Medical Treatment Possession Limits Increase Rulemaking Approval Resolution of 2016

Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services with comments from the Committee on Judiciary

PR21-1040 Chancellor of the District of Columbia Public Schools Antwan Wilson Confirmation Resolution of 2016

Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

PR21-1041 Domestic Violence Fatality Review Board Erin Larkin Confirmation Resolution of 2016

Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-1042 Domestic Violence Fatality Review Board Dianne Hampton Confirmation Resolution of 2016

Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-1043 Domestic Violence Fatality Review Board Laurie Kohn Confirmation Resolution of 2016

Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-1044 Domestic Violence Fatality Review Board Sharlene Kranz Confirmation Resolution of 2016

Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-1045 Domestic Violence Fatality Review Board Varina Winder Confirmation Resolution of 2016

Intro. 11-22-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-1046 Qualified Zone Academy Bond Designation Approval Resolution of 2016

Intro. 11-23-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

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

REVISED

NOTICE OF PUBLIC HEARING ON

**B21-781, the ATV Fuel Prohibition Amendment Act of 2016; and
B21-923, the Pedestrian and Bicycle Safety Technical Amendment Act of
2016**

Monday, December 12, 2016
at 11:00 a.m.
in Room 500 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Monday, December 12, 2016, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B21-781, the ATV Fuel Prohibition Amendment Act of 2016, and B21-923, the Pedestrian and Bicycle Safety Technical Amendment Act of 2016. The proceedings will begin at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B21-781, the ATV Fuel Prohibition Amendment Act of 2016 would prohibit retail service stations from selling or dispensing motor fuel for delivery into an all-terrain vehicle or dirt bike. B21-923, the Pedestrian and Bicycle Safety Technical Amendment Act of 2016 would make changes to reporting and notification requirements, allow an all-terrain vehicle or dirt bike to remain on public space while it is being loaded onto another vehicle for transport, clarify the penalties for motor vehicle infractions committed in a work zone, and add to the list of infractions for which an individual may be required to participate in the District's ignition interlock program.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official 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. 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.

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 or faxed to (202) 724-8118. The record will close at the end of the business day on December 20, 2016.

This notice has been revised to remove B21-673, the Personal Delivery Device Act of 2016, from the hearing agenda.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC ROUNDTABLE**

on the

Nomination of a new Chancellor for D.C. Public Schools

on

**Monday, December 5, 2016
5:00 p.m., Benning Neighborhood Library
3935 Benning Road NE
Washington, DC 20019**

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on the nomination of a new Chancellor for D.C. Public Schools. The second in a series of roundtables will be held at 5:00 p.m. on Monday, December 5, 2016 at Benning (Dorothy I. Height) Neighborhood Library.

The stated purpose of this roundtable is to discuss the nomination of a new Chancellor for D.C. Public Schools.

Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm Friday, December 2. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

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 on Education, Council of the District of Columbia, Suite 116 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 12, 2016.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE**

ANNOUNCE A PUBLIC ROUNDTABLE

on

**PR 21-991, “Not for Profit Hospital Corporation Board of Directors
Conrad L. Dawson Appointment Resolution of 2016”**

on

**Thursday, December 8, 2016
12:00 p.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of an oversight roundtable of the Committee of the Whole on PR 21-991, the “Not for Profit Hospital Corporation Board of Directors Conrad L. Dawson Appointment Resolution of 2016”. The roundtable will be held on Thursday, December 8, 2016, at 12:00 p.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PR 21-991 is to confirm the reappointment of Dr. Conrad L. Dawson to the Board of Directors of the Not-For-Profit Hospital Corporation Board of Directors (also known as the United Medical Center). The purpose of this roundtable is to receive testimony from government and public witnesses as to the fitness of this nominee for the Board.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Michael Battle at cow@dccouncil.us, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, December 6, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Tuesday, December 6, 2016, 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 Friday, December 16, 2015.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC ROUNDTABLE**

on

**PR21-1040, Chancellor of the District of Columbia Public Schools Antwan Wilson
Confirmation Resolution of 2016**

on

**Thursday, December 8, 2016
10:00 a.m., Hearing Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on PR21-1040, Chancellor of the District of Columbia Public Schools Antwan Wilson Confirmation Resolution of 2016. The roundtable will be held at 10:00 a.m. on Thursday, December 8, 2016 in Hearing Room 500 of the John A. Wilson Building.

The stated purpose of PR21-1040 is to confirm the appointment of Antwan Wilson as Chancellor of the District of Columbia Public Schools in accordance with section 104 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-174), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01).

Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm Tuesday, December 6. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

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 on Education, Council of the District of Columbia, Suite 116 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 12, 2016.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017
Protest Hearing Date: March 29, 2017

License No.: ABRA-104739
Licensee: Phillips Seafood - Ten Tavern and Grill, LLC
Trade Name: 10 Tavern & Grill
License Class: Retailer's Class "C" Restaurant
Address: 707 G Street, N.W.
Contact: Stephen O'Brien, Esq.: 202-625-7700

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this licensee 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 on January 30, 2017 at 10 a.m., 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. The Protest Hearing date is scheduled on March 29, 2017 at 1:30 p.m.

NATURE OF OPERATION

Bar and Restaurant serving lunch and dinner with menu offerings such as salads, soups, sandwiches, and burgers. Total Occupancy Load of 145 inside, with 130 seats, and a Sidewalk Café with an occupancy of 25.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES

Sunday through Saturday 10 am – 2 am

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

Sunday through Thursday 10 am – 11 pm, Friday and Saturday 10 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
12/2/2016

Notice is hereby given that:

License Number: ABRA-094795

License Class/Type: C Restaurant

Applicant: Appioo, LLC

Trade Name: Appioo

ANC: 1B02

Has applied for the renewal of an alcoholic beverage license at the premises:

1924 9TH ST NW, WASHINGTON, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

1/16/2017

A HEARING WILL BE HELD ON:

1/30/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Monday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Tuesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Wednesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Thursday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Friday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am
Saturday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017
Protest Hearing Date: March 29, 2017

License No.: ABRA-104755
Licensee: Cucina al Volo, LLC
Trade Name: Cucina al Volo
License Class: Retailer's Class "D" Tavern
Address: 1309 5th Street, N.E.
Contact: Stephen J. O'Brien: 202-625-7700

WARD 5

ANC 5D

SMD 5D01

Notice is hereby given that this licensee 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 on January 30, 2017 at 10 a.m., 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. The Protest Hearing date is scheduled on March 29, 2017 at 4:30 p.m.

NATURE OF OPERATION

New Class "D" Tavern with 8 assigned seats and an additional 23 seats in the indoor common area and 64 seats in the Summer Garden common area. DT will serve multiple varieties of Italian pastas and sauces.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SUMMER GARDEN

Sunday through Thursday 8 am - 2 am, Friday and Saturday 8 am - 3 am.

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/18/2016**

****RESCIND**

Notice is hereby given that:

License Number: ABRA-077268

License Class/Type: B Retail - Grocery

Applicant: 512 Rhode Island Avenue LLC

Trade Name: Grapes n' Hopes Market

ANC: 6E02

Has applied for the renewal of an alcoholic beverage license at the premises:

512 RHODE ISLAND AVE NW

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:**

01/02/2017

A HEARING WILL BE HELD ON:

01/16/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	10 am - 6 pm	10 am - 6 pm
Monday:	7 am - 8 pm	9 am - 8 pm
Tuesday:	7 am - 8 pm	9 am - 8 pm
Wednesday:	7 am - 8 pm	9 am - 8 pm
Thursday:	7 am - 8 pm	9 am - 8 pm
Friday:	7 am - 8 pm	9 am - 8 pm
Saturday:	10 am - 8 pm	9 am - 8 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017
Protest Hearing Date: March 29, 2017

License No.: ABRA-104608
Licensee: SMSK, LLC
Trade Name: Heritage India DC
License Class: Retailer's Class "C" Restaurant
Address: 3238 Wisconsin Avenue, N.W.
Contact: Murray A. Kivitz, Esq.: 301-951-3400

WARD 3

ANC 3C

SMD 3C09

Notice is hereby given that this licensee 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 on January 30, 2017 at 10 a.m., 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. The Protest Hearing date is scheduled on March 29, 2017 at 1:30 p.m.

NATURE OF OPERATION

A Restaurant serving Indian cuisine for dining. Total Occupancy Load of 48 seats, and a Sidewalk Café with an occupancy of 14.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE AND FOR SIDEWALK CAFÉ

Sunday through Saturday 10 am – 11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
 Protest Petition Deadline: January 16, 2017
 Roll Call Hearing Date: January 30, 2017
 Protest Hearing Date: March 29, 2017

License No.: ABRA-089388
 Licensee: Politics & Prose, Inc.
 Trade Name: Politics & Prose
 License Class: Retailer’s Class “D” Multipurpose Facility
 Address: 5015 Connecticut Avenue, N.W.
 Contact: Jason Facci, Esq. (845)323-1580

WARD 3 ANC 3F SMD 3F05

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 **Roll Call Hearing date on January 30, 2017 at 10 a.m., 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. The **Protest Hearing date** is scheduled on **March 29, 2017 at 4:30 p.m.**

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to expand its operation, also using the basement and first floor.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 10 am – 8 pm, Monday through Saturday 9 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017
Protest Hearing Date: March 29, 2017

License No.: ABRA-104724
Licensee; Shake Shack of Washington DC, LLC
Trade Name: Shake Shack
License Class: Retailer's Class "D" Restaurant
Address: 1400 14th Street N.W.
Contact: Andrew Kline: 202 686-7600

WARD 2

ANC 2F

SMD 2F02

Notice is hereby given that this licensee 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 on January 30, 2017 at 10 a.m., 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. The Protest Hearing date is scheduled on March 29, 2017 at 4:30 p.m.

NATURE OF OPERATION

New Restaurant. Sidewalk Café with 81 seats. Total Occupancy Load of 138.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE

SALES/SERVICE/CONSUMPTION ON PREMISES AND FOR SIDEWALK CAFE

Sunday through Saturday 11 am -11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017
Protest Hearing Date: March 29, 2017

License No.: ABRA-104725
Licensee: Shake Shack of Washington DC, LLC
Trade Name: Shake Shack
License Class: Retailer's Class "D" Restaurant
Address: 50 M Street, S.E.
Contact: Andrew Kline: 202 686-7600

WARD 6

ANC 6D

SMD 6D02

Notice is hereby given that this licensee 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 on January 30, 2017 at 10 a.m., 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. The Protest Hearing date is scheduled on March 29, 2017 at 1:30 p.m.

NATURE OF OPERATION

New Restaurant serving American cuisine and specializing in burgers and shakes. Total Occupancy Load: 125.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday 11 am -11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017

License No.: ABRA-096137
Licensee: Songbyrd, LLC
Trade Name: Songbyrd
License Class: Retailer's Class "C" Tavern
Address: 2477 18th Street, N.W.
Contact: Paul Pascal: (202) 544-2200

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has applied for a Substantial Change 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 on January 16, 2017 at 10 a.m., 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 to the existing premises, to include an additional internal space which currently has 40 seats.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 11 am - 2 am, Friday & Saturday 11 am - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017
Protest Hearing Date: March 29, 2017

License No.: ABRA-104782
Licensee: Bespoke 1337, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Tavern
Address: 1337 H Street, N.E.
Contact: Stephen J. O'Brien: (202) 625-7700

WARD 6 ANC 6A SMD 6A06

Notice is hereby given that this licensee 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 on January 30, 2017 at 10 a.m., 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. The Protest Hearing date is scheduled on March 29, 2017 at 1:30 p.m.

NATURE OF OPERATION

New Class "C" Tavern/neighborhood bar with 65 seats and Total Occupancy Load of 199. CT also has a Summer Garden with 15 seats and has requested an Entertainment Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SUMMER GARDEN

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

HOURS OF LIVE ENTERTAINMENT

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 2, 2016
Protest Petition Deadline: January 16, 2017
Roll Call Hearing Date: January 30, 2017

License No.: ABRA-100543
Licensee: The Bottle Shop, Inc.
Trade Name: The Bottle Shop
License Class: Class "B" Grocery
Address: 2216 18th Street, N.W.
Contact: Chrissie Chang: (703) 992-3994

WARD 1

ANC 1C

SMD 1C03

Notice is hereby given that this licensee has applied for a Substantial Change to their 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 on January 30, 2017 at 10 a.m., 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

Request a Class Change from a Grocery "B" to Retailer "A" Liquor Store.

CURRENT HOURS OF OPERATION

Sunday through Saturday 8:30 am – 12:00 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 9:00 am – 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
10/21/2016

**CORRECTION

Notice is hereby given that:

License Number: ABRA-085710

License Class/Type: C Tavern

Applicant: Canal 5 LLC

Trade Name: The Brig

ANC: 6B04

Has applied for the renewal of an alcoholic beverage license at the premises:

1007 8TH ST SE, WASHINGTON, DC

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

12/5/2016

A HEARING WILL BE HELD ON:

12/19/2016

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment Hours on Summer Garden: See SA

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows include Sunday through Saturday with specific time ranges.

**Hours of Summer Garden Operation

**Hours of Sales Summer Garden

Table with 2 columns: Days, Hours of Operation. Rows include Sunday through Saturday with specific time ranges.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
10/21/2016

**RESCIND

Notice is hereby given that:

License Number: ABRA-085710

License Class/Type: C Tavern

Applicant: Canal 5 LLC

Trade Name: The Brig

ANC: 6B04

Has applied for the renewal of an alcoholic beverage license at the premises:

1007 8TH ST SE, WASHINGTON, DC

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

12/5/2016

A HEARING WILL BE HELD ON:

12/19/2016

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment Summer Garden

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

**Hours of Summer Garden Operation

**Hours of Sales Summer Garden

Table with 2 columns: Day, Hours. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

Posting Date: **December 2, 2016
Petition Date: **January 16, 2017
Hearing Date: **January 30, 2017

License No.: ABRA-101399
Licensee: Timber Pizza Company, LLC
Trade Name: Timber Pizza Company
License Class: Retailer’s Class “C” Restaurant
Address: 809 Upshur Street, N.W.
Contact: Andrew Dana: 202-258-6832

WARD 4

ANC 4C

SMD 4C07

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 to add a Sidewalk Cafe with 12 seats.

CURRENT HOURS OF OPERATION

Sunday 7:00 am – 1:00 am, Monday through Saturday 7:00 am - 2:00 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday 8:00 am – 1:00 am, Monday through Saturday 8:00 am - 2:00 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Saturday 12:00 pm - 10:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: **November 18, 2016
Petition Date: **January 2, 2017
Hearing Date: **January 16, 2017

License No.: ABRA-101399
Licensee: Timber Pizza Company, LLC
Trade Name: Timber Pizza Company
License Class: Retailer’s Class “C” Restaurant
Address: 809 Upshur Street, N.W.
Contact: Andrew Dana: 202-258-6832

WARD 4

ANC 4C

SMD 4C07

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 to add a Sidewalk Cafe with 12 seats.

CURRENT HOURS OF OPERATION

Sunday 7:00 am – 1:00 am, Monday through Saturday 7:00 am - 2:00 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday 8:00 am – 1:00 am, Monday through Saturday 8:00 am - 2:00 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Saturday 12:00 pm - 10:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
12/2/2016

Notice is hereby given that:

License Number: ABRA-096141

License Class/Type: C Restaurant

Applicant: Zion Kitchen and Trading, Inc.

Trade Name: Zion Kitchen and Trading

ANC: 5C05

Has applied for the renewal of an alcoholic beverage license at the premises:

1805 MONTANA AVE NE, WASHINGTON, DC 20002

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

1/16/2017

A HEARING WILL BE HELD ON:

1/30/2017

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 2 am	10 am - 2 am	-
Monday:	10 am - 2 am	10 am - 2 am	-
Tuesday:	10 am - 2 am	10 am - 2 am	-
Wednesday:	10 am - 2 am	10 am - 2 am	-
Thursday:	10 am - 2 am	10 am - 2 am	-
Friday:	10 am - 3 am	10 am - 3 am	-
Saturday:	10 am - 3 am	10 am - 3 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JANUARY 25, 2017
441 4TH 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 THREE

19395
ANC-3F **Application of the Embassy of the State of Kuwait**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the accessory structure location requirements of Subtitle D § 5000.4, to allow the installation of a security booth in front of an Ambassador's residence in the R-8 Zone at premises 3107 Fessenden Street N.W. (Square 2277, Lot 8).

WARD FIVE

19382
ANC-5E **Application of GPI Holdings US LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the lot occupancy requirements of Subtitle E § 304.1, to construct an addition to an existing four-unit apartment house in the RF-1 Zone at premises 709 Jackson Street N.E. (Square 3649, Lot 810).

WARD THREE

19407
ANC-3D **Appeal of The Friends of Lowell Street**, pursuant to 11 DCMR §§ 3100 and 3101, from a June 30, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue S.O. 16-04562, for the subdivision of a lot in the R-1-A District at premises 4925 Lowell Street N.W. (Square 1436, Lot 34).

WARD FIVE

19408
ANC-5B **Application of Serra Sippel**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle D § 304.1, the rear yard requirements of Subtitle D § 306.1, the side yard requirements of Subtitle D § 307. 1, and the side yard requirements of Subtitle D § 307.5, to allow a second-story rear addition and porch to an existing one-family dwelling in the R-1-B Zone at premises 3619 15th Street N.E. (Square 4005, Lot 18).

BZA PUBLIC HEARING NOTICE
JANUARY 25, 2017
PAGE NO. 2

WARD FOUR

19409 **Application of Maple Park Associates, LLC**, pursuant to 11 DCMR
ANC-4B Subtitle X, Chapter 9, for a special exception under the eating and drinking
 establishment requirements of Subtitle H § 1106.1(e)(1), to establish a coffee
 shop in the NC-2 Zone at premises 232 Carroll Street N.W. (Square 3354, Lot
 833).

**THIS APPLICATION WAS POSTPONED FROM THE PUBLIC HEARING OF
DECEMBER 14, 2016 BY THE APPLICANT:**

WARD TWO

17549A **Application of Georgetown Visitation Preparatory School**, pursuant to
ANC-2E 11 DCMR Subtitle Y § 704, for a modification of significance of BZA Order No.
 17549, now requesting special exception relief under the R-use requirements of
 Subtitle U § 203.1(1), to complete additions to existing academic buildings,
 increase student enrollment to 530, and increase faculty and staff to 125 for an
 existing private school in the R-3 Zone at premises 1524 35th Street N.W.
 (Square 1292, Lot 202).

**THIS APPLICATION WAS POSTPONED FROM THE PUBLIC HEARING OF
NOVEMBER 30, 2016 BY THE APPLICANT:**

WARD SIX

18915A **Application of Aminta**, pursuant to 11 DCMR Subtitle Y § 704, for a
ANC-6B modification of significance of BZA Order No. 18915, now requesting special
 exception relief under the parking requirements of Subtitle C § 703, and the
 loading requirements of Subtitle C § 909, and variance relief under the lot
 occupancy requirements of Subtitle G § 404.1, to construct a mixed-use building
 in the MU-4 Zone at premises 1330-1338 Pennsylvania Avenue S.E. (Square
 1044, Lots 12, 29, and 802).

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 Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 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
JANUARY 25, 2017
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. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

ለመነተፍ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French

Avez-vous besoin d’assistance pour pouvoir participer ? Si vous avez besoin d’aménagements spéciaux ou d’une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a

BZA PUBLIC HEARING NOTICE
JANUARY 25, 2017
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Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

FREDERICK L. HILL, CHAIRPERSON
ANITA BUTANI D'SOUZA, VICE CHAIRPERSON
JEFFREY L. HINKLE, NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, January 23, 2017, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 04-14D (Florida Rock Properties, Inc. and Riverfront Holdings I, LLC – Second-Stage Review and Approval of a Planned Unit Development)

THIS CASE IS OF INTEREST TO ANC 6D

On July 5, 2016, the Office of Zoning received an application from Florida Rock Properties, Inc. and Riverfront Holdings I, LLC (the “Applicant”). The Applicant is requesting approval of a second-stage planned unit development (“PUD”) for Phase II of the development in Square 708, Lot 14. The Office of Planning provided its report on September 2, 2016, and the case was set down for public hearing at the Zoning Commission’s public meeting on September 26, 2016. The Applicant provided its prehearing statement on November 1, 2016.

This project is the second phase of a four-stage development, originally approved by the Zoning Commission in 1998. The PUD was modified several times after its original approval, with the most recent modification being approved by the Zoning Commission in Case No. 04-14B in 2013. The entire PUD was approved to consist of four phases, including two residential buildings with ground floor retail use (Phases I and II), a commercial office building with ground floor retail (Phase III), and a hotel (Phase IV). Construction of Phase I is nearing completion. As noted above, this hearing notice pertains solely to Phase II.

The property that is the subject of this application consists of approximately 48,189 square feet of land area and is bounded by Potomac Avenue, S.E. to the north, the Anacostia River to the south, Phase I to the east, and Phase III to the west (a portion of Square 708, Lot 14). The Zoning Commission approved a PUD-related map amendment for the Property to the C-3-C Zone District.

The Applicant proposes to develop the property consistent with the first-stage approval with a residential building with ground floor retail. The residential building will be 130 feet in height with 250,000 square feet of residential use including approximately 255 units, approximately 12,500 square feet of retail use, and approximately 180 below-grade parking spaces. Phase II will also include the approved corresponding esplanade improvements along the water, as well as the marina. Phase II proposes a FAR of 5.4 and a lot occupancy of 44%. The application includes a request for flexibility from the loading and single record lot requirements of the Zoning Regulations.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 4.

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-Z DCMR § 404.1.

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. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for an 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, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: <https://app.dcoz.dc.gov/Help/Forms.html>.** This form may also be obtained from the Office of Zoning at the address stated below.

11-Z DCMR § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to 11Z DCMR § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at 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), or by calling (202) 727-0789.

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 11-Z DCMR § 408.4, 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 <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to 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, 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.

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Quý vị có cần trợ giúp gì để tham gia không? Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለሚተኙ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓጎም) ካስፈለገዎት እባክዎን ከስብሰባው አጭነት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኚህ አገልግሎቶች የሚጠቅሙ በነጻ ናቸው።

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, January 19, 2017, @ 6:30 P.M.
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001**

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 06-14D (MidAtlantic Realty Partners, LLC – PUD Modification @ Square 3584)

THIS CASE IS OF INTEREST TO ANCs 5E, 5D, and 6C

On July 18, 2016, the Office of Zoning received an application from MidAtlantic Realty Partners, LLC ("Applicant") requesting approval of a modification to a previously approved planned unit development ("PUD") for property located at Square 3584, Lots 814, 815, 820, 821, and 822 ("Property"). The Office of Planning submitted a report to the Zoning Commission, dated October 7, 2016. At its October 17, 2016, public meeting, the Zoning Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement on October 27, 2016.

The Property consists of approximately 134,665 square feet of land area and is located within the boundaries of Advisory Neighborhood Commission ("ANC") 5E. Also, the Property is directly across the street from ANCs 5D and 6C. The Property is within the MU-9 Zone and is partially improved with an apartment house - the Elevation at Washington Gateway - and related amenities. The Property and the said improvements are the subject of Z.C. Order No. 06-14,¹ which originally granted approval of a consolidated PUD that included two buildings. One building originally contained a mix of residential and hotel uses; the other was an office building divided into a North Tower and South Tower. Pursuant to Z.C. Order No. 06-14B, the Applicant was granted the option of constructing residential units in lieu of the hotel use. The Applicant now proposes to modify the PUD in order to (i) convert the North Tower of the office building to residential use, (ii) reconfigure and redesign the South Tower of the office building, and (iii) have the option of changing the office use to residential use.

The public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4 of the 2016 Zoning Regulations.

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

¹ Z.C. Order No. 06-14 was amended by Z.C. Order Nos. 06-14A, 06-14B, and 06-14C.

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 Subtitle Z § 404.1.

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. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for the affected ANCs, 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) intends to participate at the hearing, the ANC shall submit the written report described in Subtitle Z § 406.3 no later than seven (7) days before the date of the hearing. The report shall contain the information indicated in 11-Z DCMR § 406.2 (a) through (i).

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), or by calling (202) 727-0789.

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- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
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OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education (“State Superintendent”), pursuant to authority set forth in Sections 3(b)(6A), 3(b)(9), 3(b)(9A), 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(6A), (b)(9), (b)(9A), and (b)(11)) (2012 Repl. & 2016 Supp.); the Day Care Policy Act of 1979, effective September 19, 1979 (D.C. Law 3-16; D.C. Official Code §§ 4-401 *et seq.* (2012 Repl. & 2016 Supp.)) (“Day Care Act”); Mayor’s Order 2009-3, dated January 15, 2009; the Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code §§ 7-2031 *et seq.* (2012 Repl.)) (“Facilities Act”); Mayor’s Order 2009-130, dated July 16, 2009; Sections 503 and 504 of the Early Intervention Program Establishment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 7-863.03 and 7-863.04 (2012 Repl.)); Mayor’s Order 2009-167, dated September 28, 2009; Titles I and II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (“CYSHA”), effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 1-620.31 *et seq.* and §§ 4-1501.01 *et seq.* (2012 Repl. & 2016 Supp.)); and the Healthy Tots Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code §§ 38-281 *et seq.* (2016 Supp.)); and pursuant to the Social Security Act, approved February 22, 2012 (Pub.L. 112-96; 42 U.S.C. § 618(c)); the Child Care and Development Block Grant Act of 2014 (“CCDBG Act”), approved November 19, 2014 (Pub.L. 113-186; 42 U.S.C. §§ 9858 *et seq.*), and regulations promulgated thereunder at 45 C.F.R. Parts 98 and 99, hereby repeals Sections 300 to 379 in Chapter 3 (Child Development Facilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (“DCMR”), and adds a new Chapter 1 (Child Development Facilities: Licensing) to Subtitle A (Office of the State Superintendent of Education) of Title 5 DCMR (Education).

I. Purpose

Research has shown that licensing and regulatory requirements for child care affect the quality of care and the health and development of children in care. Accordingly, this final rulemaking is necessary to ensure that care and education provided in a licensed Child Development Facility in the District is not only safe, but also supports children’s healthy development and future academic achievement and success by establishing the minimum requirements necessary to protect the health, safety and welfare of children in care. In addition, the final rulemaking will amend the District’s regulatory framework for child development facilities to comply with the federal CCDBG Act and the regulations promulgated thereunder.

II. CCDBG Act and Implementing Regulations

On November 19, 2014, the bipartisan CCDBG Act was signed into federal law by President Obama, thereby strengthening the requirements to protect the health and safety of children in child care and enhancing the quality of child care and the early childhood workforce across the country. Thereafter, on September 30, 2016, the United States Department of Health and Human Services, Office of Child Care, Administration for Children and Families (“ACF”) issued a final rule amending 45 C.F.R. Parts 98 and 99 (“implementing regulations” or “federal regulations”)

to implement the reauthorized CCDBG Act. The CCDBG Act made sweeping statutory changes that required significant reforms to the District's Child Development Facility regulations to raise the health, safety, and quality standards of child care, ensure more stable child care assistance to families, and enhance the consumer outreach and education for families. These new requirements reflect current research on the importance of stable, high quality early experiences to children's future success. In addition, studies have shown the increasing cost of child care and the important role of financial assistance in helping parents afford child care.

The implementing regulations, amending 45 C.F.R. Parts 98 and 99, add new detailed requirements that are either directly mandated by or advance the revised intent of the CCDBG Act. The relevant major provisions of the CCDBG Act provide requirements to: (1) protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; and (3) enhance the quality of child care and the early childhood workforce.

First, the CCDBG Act established minimum health and safety standards including mandatory criminal background checks, annual monitoring of providers, and specific health and safety trainings. Accordingly, children cared for in licensed child development facilities in the District will be cared for by caregivers who have had basic training in health and safety practices and child development. Parents will know that individuals who care for their children do not have prior criminal records that indicate potential endangerment of their children. These changes to the District's licensing scheme not only conforms with the requirements set forth by the federal government but recognizes that health and safety is a necessary foundation for quality child care that supports early learning and development.

Second, the CCDBG Act increased consumer education requirements for the District and made clear that parents need transparent information about health and safety practices, monitoring results, and the quality of child care providers. Currently information on OSSE's licensing and monitoring process is available at (insert URL with flow charts). By November 19, 2017 the results of monitoring visits and substantiated complaints must be made available on an OSSE website. To further support this provision of the CCDBG Act, the District is implementing an enhanced quality rating and improvement system (QRIS), to assist providers in improving the quality of care. In addition, the CCDBG Act requires that all licensing inspectors, who conduct pre-licensure inspections and monitoring visits, are qualified to inspect the facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served.

Finally, the CCDBG Act requires the District to implement training and professional development standards for caregivers. The implementing regulations build on this requirement by outlining the components of a professional development framework. The CCDBG Act emphasized the fundamental importance of the caregiver in a high-quality early learning setting, and this final rulemaking helps ensure that early childhood professionals have the knowledge and skills they need to support the health and development of young children.

While the CCDBG Act does provide some flexibility to states in developing child care policies, the implementing regulations clearly provide where states have and do not have opportunities to

exercise flexibility. For example, the CCDBG Act requires facilities receiving CCDF funds to participate in QRIS. Accordingly, the State Superintendent has limited the requirement to participate in QRIS to facilities that receive CCDF funding, while providing the opportunity for all licensed facilities to participate. However, when a requirement is mandated only for facilities receiving CCDF funding, the federal government encourages states to apply the requirements to all licensed facilities. Because the District's goal is to provide safe and high quality care to all children in the District, mandating the same health and safety requirements across all licensed facilities in the District is necessary to avoid a bifurcated system in which subsidy eligible children have access to only a portion of child care providers who meet applicable standards. ACF used this rationale to mandate criminal background checks for all licensed providers across the country.

This final rulemaking also aligns with recommendations produced with the expertise of researchers, physicians, and practitioners set forth in *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs*, 3rd Edition (American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education, Washington DC (2011) (available at <http://cfoc.nrckids.org/StandardView.cfm>) ("*Caring for Our Children*"). *Caring for Our Children* is a set of recommendations intended to create a common framework to align basic health and safety efforts across all early childhood settings. Recently, ACF published "*Caring for Our Children Basics*" ("*CfoC Basics*") (available at www.acf.hhs.gov/sites/default/files/eecd/caring_for_our_children_basics.pdf) to provide the minimum, baseline standards for health and safety based on *Caring for Our Children*. ACF recommends that states looking for guidance on establishing health and safety standards consult *CfoC Basics*. However, ACF encourages states to go beyond the baseline standards to develop a comprehensive and robust set of health and safety standards that cover additional areas related to program design, caregiver safety, and child developmental needs, using *Caring for Our Children*.

As with the reauthorized CCDBG Act, this final rulemaking is intended to be an integral part of supporting families, promoting both the healthy development of children in the District of Columbia and parents' pathways to the middle class, and improving the overall quality of child care in the District.

III. Summary of the Rulemaking

This final rulemaking creates a new Chapter 1 (Child Development Facilities: Licensing) of Title 5-A DCMR, which sets forth the framework for obtaining and maintaining a license to operate a Child Development Facility in the District, and the requirements and standards that apply to all licensed child development facilities including the new CCDBG requirements. More specifically, the sections of Chapter 1 of Title 5-A DCMR are organized into the following subject areas accordingly:

- (1) General Licensure Provisions: §§ 100-102 and § 199
- (2) License Application and Maintenance: §§ 103-117
- (3) Requirements for All Licensees: §§ 118-121
- (4) Facilities, Supplies, Equipment and Environmental Health: §§ 122-126

- (5) Administration and Operation: §§ 127-131
- (6) Staffing: §§ 132-139
- (7) Program Activities for Healthy Development: §§ 140-141
- (8) Health Promotion and Protection: §§ 142-161
- (9) Additional Requirements for Licensed Centers: §§ 162-166
- (10) Additional Requirements for Licensed Child Development Homes: §§ 167-168
- (11) Additional Requirements for Licensed Expanded Child Development Homes: §§ 169-171
- (12) Additional Requirements for Out-of-School-Time Programs: §§ 172-176

IV. Advanced Notice of Proposed Rulemaking

The majority of the current regulations at Chapter 3 of Title 29 DCMR were last revised in 2007. Understanding that any changes to the licensing regulations would have a significant impact on a number of children, families and businesses in the District, OSSE issued an Advanced Notice of Proposed Rulemaking (ANPR) on OSSE's website on December 24, 2015 to provide the early learning community and stakeholders with an opportunity to provide comment prior to an issuance of proposed rulemaking. The comment period for the ANPR was open for forty-five (45) days, closing February 8, 2016. In addition, OSSE held four public hearings during the public comment period in various locations throughout the District to solicit verbal or written comments from the public on the ANPR. Notice of the Public Hearings and the forthcoming ANPR was published in the *D.C. Register* at 62 DCR 16097 on December 18, 2015. Further, the Notice provided that Amharic, Chinese, French, Spanish, Vietnamese, Korean and Sign Language interpreters would be available if the services were requested prior to the selected hearing date. By the end of the ANPR public comment period, OSSE received comments from over twenty (20) various interested parties, including individual stakeholders, child development facilities, and non-profit organizations throughout the District.

OSSE reviewed and thoroughly considered all comments received on the ANPR and at the public meetings. Overall, stakeholders provided valuable insights and feedback, enabling OSSE to refine and significantly improve its earlier proposed rule and draft revisions.

V. Notice of Proposed Rulemaking

On September 9, 2016, a Notice of Proposed Rulemaking was published in the *D.C. Register*, which included amendments based on comments received during the ANPR, for a thirty (30) day public comment period at 63 DCR 11279. OSSE also held a meeting for all licensed child development facilities to discuss the proposed rulemaking on September 10, 2016 where over 100 providers attended. The public comment period for the Notice of Proposed Rulemaking closed on October 11, 2016, with the State Superintendent having received comments from seventeen (17) interested parties, including individual stakeholders, child development facilities, and non-profit organizations throughout the District.

During the public comment period, OSSE received a few requests for a non-English translation of the proposed regulations and an extension of the comment period. While OSSE greatly

appreciates the work of the facilities serving the District's diverse population, there is not current precedent for the translation of District rulemakings. This is because, pursuant to the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.* (2012 Repl.)), District agencies, including OSSE, are not legally required to provide the requested translations of the proposed rulemaking. Specifically, D.C. Official Code § 2-1933 provides that:

A covered entity shall provide translations of *vital documents* into any non-English language spoken by a limited or no-English proficient population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity in the District of Columbia.

(Emphasis added). The relevant portion of the definition of "vital document" provides:

Vital documents means applications, notices, complaint forms, legal contracts, and outreach materials published by a covered entity in a tangible format that inform individuals about their rights or eligibility requirements for benefits and participation.

D.C. Official Code § 2-1931. The definition does not expressly state that proposed regulations are vital documents. Rather, it concerns documents that are actually in effect and being used. Further a regulation is not itself an application, notice, complaint form, legal contract, or outreach material. Therefore, the proposed text of Chapter 1 in Title 5-A was not a vital document for which translation was legally required. Nonetheless, OSSE will issue a document summarizing key components of the regulations that will be available in Amharic, Chinese, French, Spanish, and Vietnamese on OSSE's website in the near future.

In summary, a majority of the comments received requested clarification around the various requirements but did not seek amendments. Accordingly, the comments received did not compel the State Superintendent to make any substantive changes to the Notice of Proposed Rulemaking, and the State Superintendent is therefore issuing these regulations without further request for comment. However, to provide further transparency and respond to requests for clarification, the State Superintendent (1) responds to a majority of the stakeholders' comments and (2) identifies any non-substantive technical changes included in this final rulemaking, below:

A. General Licensure Provisions

Sections 100 through 102 provide the general provisions for child development licenses. The State Superintendent did not receive many comments in these sections. One commenter sought clarification regarding § 102.9, which provides that a licensed facility that does not accept public funding *may* participate in OSSE's Quality Rating and Improvement System (QRIS). Licensed facilities that do not receive public funding are, therefore, not required to participate in the QRIS. The State Superintendent received a number of comments during the ANPR requesting that the mandate to participate in the QRIS was aligned to the CCDBG Act and limited to licensed facilities accepting public funding. The State Superintendent accepted the recommendation in the

proposed rulemaking and will maintain the proposed language in the final rulemaking. While not required, both the federal government and OSSE encourage all licensed facilities to participate in the QRIS.

Additionally, a commenter noted that the language in § 101.3(a) was confusing and needed clarification. In response to this comment, OSSE clarified the language by striking the word “no” and adding a comma before the phrase “on a regular basis.”

One commenter requested clarification of the exemption for “informal or occasional parent-supervised play groups” in § 101.5(d). Section 101.5 sets forth the services and activities exempted from obtaining a license to operate a child development facility. Some of the services and activities are specifically exempted from licensure in the Facilities Act (D.C. Official Code § 7-1022). The rest of the services and activities are not new exemptions *per se* but rather OSSE clarifying language in the law defining a “child development facility” as one that provides care and other services for children on a regular basis by identifying additional entities that does not meet the definition, including an informal or occasional parent-supervised play group. OSSE intended that an informal or occasional parent-supervised play group is understood as a group of parents with their respective children gathering for the children to play together while their parents supervised. OSSE did not intend for the informal or occasional parent-supervised play group to be one parent supervising, and ultimately caring for, a group of children and where the group of children are gathered on a regular basis at the same place with a different parent supervising each time.

Section 199 presents the definitions for the terms and phrases used throughout the rulemaking. Two comments were received regarding the definitions. One commenter requested that OSSE reconsider the definition of “child development center”. The definition of “child development center” is based on the number of children a facility serves and the premises where child care is provided, not the type of program that is offered, thereby distinguishing a “center” from a “home” or “expanded home” offering child care services. The commenter further requested “private nursery schools and private child care centers” are included in OSSE’s definition of “private school.” However, neither the proposed rulemaking nor this final rulemaking define “private school.” Private, parochial and independent schools that meet certain requirements are either entirely exempted from licensure or exempted from specific provisions of licensure in the final rulemaking. The Facilities Act specifically excludes private schools “engaged in legally required and related functions” from the definition and therefore the requirement to be licensed. OSSE interprets this provision to mean a private school offering both kindergarten to twelfth grade services and pre-k services are exempted from licensure for services provided during the instructional day. This interpretation aligns with conforming amendments made to the Facilities Act when the Pre-k Act was passed to exempt pre-K programs in DCPS, public charter and high quality community based organizations from licensure. The final rulemaking makes this exemption clear in § 101.5(l). In addition, private, parochial, or independent schools caring for infants and toddlers that meet certain requirements, including offering a pre-K through twelfth (12th) grade educational program or any portion thereof, are exempted from provisions in the rulemaking around daily program activities and teacher qualifications. Accordingly, “private nursery schools and private child care centers” are not a school offering pre-K through twelfth

(12th) grade educational programming and could not meet the requirements for either exemption from licensure or exemption from specific provisions of licensure.

Another comment requested the “District of Columbia Early Learning Standards” be clarified in the body of the rule, and not in the definitions. Similarly, the State Superintendent received recommendation to strike Section 140.1, which requires that a licensee implement a curriculum consistent with the “District of Columbia Early Learning Standards.” These comments will be addressed below in *G. Program Activities for Healthy Development*.

B. License Application and Maintenance

Sections 103-117 describe how to obtain and maintain a license to operate a child development facility. The State Superintendent received a number of comments specifically regarding the components of an initial application, the components of a renewal application, waivers, restricted licenses, fees, monitoring and inspections, authority for enforcement actions, and summary suspension.

Initial Application

Section 103 sets forth the components of an initial application for a license to operate a child development facility. First, two commenters raised questions seeking clarification about the three (3) hour orientation described in § 103.2, specifically asking whether the three (3) hour orientation is required every time a license is sought for a new facility and whether the training would be available online. The orientation is required every time a license is sought for a new facility, even if the facility is under the same ownership as another facility. The orientation will be offered online and in person. However, to clarify that this requirement is required every time a license is sought, OSSE strikes the phrase “three (3) hour” to allow OSSE to adjust the orientation as necessary for various audiences. This non-substantive amendment maintains OSSE intent to ensure anyone opening a facility, whether new or the same ownership, is aware of the requirements to both obtain and maintain a license to operate a facility in the District.

Additionally, the State Superintendent received a number of comments regarding the required supporting documentation in § 103.5. Commenters specifically sought clarification around the clean hands certification, insurance coverage, and the building use agreement. One commenter noted that facilities that operate as non-profit organizations do not pay taxes and therefore would not need a Clean Hand certification. However, the Clean Hands certification does not serve as evidence that an applicant has filed taxes, rather, the Clean Hands certification verifies that an applicant does not owe more than \$100 to the District of Columbia. The Clean Hands Law (D.C. Official Code §§ 47-2861-2866) provides that an applicant for any license or permit in the District of Columbia cannot owe more than \$100 to the District government. Another comment asked for clarification around how much insurance coverage a facility must obtain, as § 103.5(f) does not indicate the total amount required for each type of insurance coverage. Section 103.5(f) does state, however, that a facility must have proof of reasonable coverage, as determined by the District of Columbia Office of Risk Management. Reasonable coverage will vary based on the size and type of facility and the services provided. Four stakeholders commented about the requirements set forth for building use agreements set forth in § 103.5(g). A building use agreement is necessary to ensure a proper contingency location, a space that may be used to

maintain child care services if the primary location is not available, is identified. In Section 107.2, a Licensee may relocate to its identified contingency location for no more than thirty days due to temporary closure. Specifically, commenters asked whether notarizing an agreement was necessary, raised concerns about the amount of information required in a building use agreement, and sought clarification around the “health and safety inspections” requirement. The State Superintendent appreciates these comments and recognizes that a building use agreement is a new requirement, however, securing a contingency location through a valid building use agreement is essential to providing stability to children and staff during an emergency situation by allowing a licensee to continue to provide care and education even if the facility’s actual premise is not usable. To clarify § 103.5(g)(6), the State Superintendent has struck “health and” and added “that are required”. Additionally, one commenter asked whether another licensed facility could serve as a contingency location. Another licensed facility may only serve as a contingency location if the facility is licensed to serve more children than currently enrolled. Finally, although no comments were received seeking clarification, the State Superintendent amended the phrase to “not more than ninety (90) days old” to § 103.5(b) to clarify this provision. This amendment is intended to clarify that the State Superintendent requires a fire safety inspection certificate that is both current and specifically for the operation of a child development facility.

It is also worth noting that this final rulemaking continues to reserve Subsections 103.5(d) and 129.2(d) for requirements to limit, eliminate, and protect children from lead-based water hazards. Also, provisions to protect children from lead-based paint hazards are in this final rulemaking in Subsections 103.5(c), 129.2(c), and 152.4 through 152.5.

Renewal Application

Section 104 sets forth the components of an application for a renewal license to operate a child development facility. Specifically, § 104.5 provides what supporting documentation is required for the application, which is almost identical to the required supporting documentation in § 103.5, however, there is one additional document, the Certificate of Immunization Compliance. The Certificate of Immunization Compliance is issued by the District’s Department of Health and certifies that the facility has reached the immunization compliance target for enrolled children and staff. One commenter asked whether child development homes would be required to obtain a Certificate of Immunization Compliance. All facilities, including centers, child development homes and expanded homes, must obtain a Certificate of Immunization Compliance to support the application for renewal license, unless the facility is granted a waiver pursuant to § 106. The commenter further asked how the Certificate of Immunization Compliance would take into account the grace period provided for immunizations. The current process to obtain a Certificate of Immunization Compliance from the Department of Health would remain the same, even with the new grace period. Facilities will continue to work with Department of Health’s Immunization Program to keep them informed of the status of their students. However, if a facility has not reached immunization compliance targets for enrolled children and staff because some children are within their grace periods, then the facility may apply for a waiver pursuant to § 106.

It is worth noting that OSSE received a number of comments during the ANPR comment period that the current immunization compliance target, ninety-eight percent (98%), is unrealistic and

unattainable. In response, OSSE removed the actual target percentage in the proposed rulemaking. OSSE continues to not include the actual target percentage in the final rulemaking and will issue guidance setting forth a new immunization compliance target shortly.

Section 104.12 provides that a renewal application may be denied if the applicant failed to abate identified deficiencies within the required timeframe provided by OSSE. Section 104.12 does not provide a specific number of days as the required timeframe. One commenter recommended a longer timeframe than ninety (90) days to abate deficiencies and further recommended that OSSE provide thirty (30) days for an applicant to submit a corrective action plan according to a timetable, similar to Headstart. The State Superintendent appreciates the comment. However, because the timeframe to abate will vary based on the nature of the deficiency, the State Superintendent retain the language as proposed and will not add a specific timeframe to abate identified deficiencies to this final rulemaking.

Waiver

Section 106 provides licensees and applicants with waiver of compliance for one or more licensure provisions. Prior to the proposed rulemaking, the only flexibility available to licensees and applicants was a variance from the physical or structural requirements. This section allows OSSE to grant waivers for any licensing provision so long as the requirements in §106 are met. The State Superintendent received three comments on the provisions in this section. One comment asked whether all three factors in § 106.1 must be considered. Subsection 106.1 requires that OSSE must determine, based on clear and convincing evidence, that all three factors are met. The waiver application must provide evidence and support for each factor. The commenter further asked what notice would be provided if a waiver was revoked and whether a facility would be provided with time to cure before a waiver is revoked. Because any waiver is issued at the discretion of OSSE to the sole benefit of a facility, notice and opportunities to cure are not provided in the same manner as if OSSE issued a summary suspension.

Restricted License

Section 107 outlines the requirements for a restricted license which is issued as an alternative to suspending or revoking an existing license when a licensed facility has one or more deficiencies. Two comments regarding restricted licenses were received. One commenter recommended that OSSE only issue a restricted license for three or more deficiencies, instead of one or more deficiencies. However, because the nature of the deficiency varies and one major deficiency may severely limit a facility's ability to operate, the State Superintendent does not accept this recommendation. Another commenter sought clarification of § 107.2, which prohibits a facility operating under a restricted license from enrolling additional children. Specifically, the commenter asked whether a facility was prohibited from increasing its current enrollment or that enrollment was "frozen" as of the date of the issuance of the restricted license. The intent of this subsection was to ensure that facilities operating under a restricted license did not attempt to serve more children until the deficiency or limitation leading to the need for a restricted license is corrected. Accordingly, a facility's enrollment is frozen as of the date the restricted license is issued until the deficiency is abated.

Fees

Section 108 sets forth the various fees for licensure. The fee structure provided in both the ANPR and the proposed rulemaking shifts the District's practices from issuing a one (1) year license to issuing a three (3) year license. One commenter asked if new applicants would be required to pay both an application fee of seventy-five dollars (\$75) and the applicable license fee. OSSE appreciates the commenter's request for clarification. Applicants seeking an initial license and a renewal license are required to pay the application fee and the applicable licensing fee. To avoid further confusion, the State Superintendent deleted the word "initial" in § 108.2 to clarify the application fee was required for both an initial application and a renewal application. Another commenter raised the concern that the fee for the three (3) year license was burdensome, and further, that the benefit of a three (3) year license was not clear as facilities would still have to meet certain annual requirements. OSSE recognizes the financial impact that shifting to a three (3) year license may have on facilities. In order to aid facilities with the cost of both the license and the application fee, OSSE will allow facilities to set up payment plan agreement. However, it must be noted that by shifting to a three (3) year licensing scheme, OSSE is able to shift its efforts from licensing facilities to quality-focused monitoring. This shift will improve the quality of child care and education across the District.

Two commenters requested that the State Superintendent amend § 108.7 to require OSSE publish a new fee schedule ninety (90) days before any new fee is implemented. OSSE will publish any new fee schedule in accordance with the District's laws and regulations requiring proper notice and comment.

Monitoring and Inspections

The Facilities Act provides OSSE with the authority to conduct investigations and inspections of licensed facilities to ensure compliance with both the Facilities Act and the licensing regulations. In addition, the CCDBG Act emphasizes the importance of regular monitoring of child care settings to ensure compliance with appropriate standards that protect the health and safety of children and mandates that a state conduct annual monitoring visits. Accordingly, Section 111 sets forth the provisions around monitoring and inspections of licensed facilities. Four comments were received for this section. One commenter requested that the State Superintendent amend § 111.1 to require that OSSE sign in before monitoring a facility and provide documentation detailing the reason for the visit. The State Superintendent did not accept this recommendation. Often, OSSE will inspect a licensing facility based on a complaint. If the complaint alleges imminent harm, OSSE reports to the facility immediately and in those situations may not have opportunity to create documentation of the reasons for a visit. Another comment questions whether OSSE having access to a facility's administrative records in § 111.5(a) suggests that OSSE could ask for records that are not relevant to compliance with the Facilities Act and the licensing regulations. While OSSE understands the commenters concerns, access to all records is necessary for OSSE to determine compliance. Furthermore, this is not a new requirement and was previously set forth in 29 DCMR § 303.4. One commenter questioned whether the requirement that OSSE have access to a facility's surveillance footage in § 111.5(c) is legal. OSSE is not mandating that a facility have recording devices, rather, OSSE is requiring that if a facility has recording devices, OSSE shall have access to review footage, which is a facility's record of the events taking place, to ensure compliance.

Finally, OSSE has received comments that facilities have received inconsistent and arbitrary enforcement of the licensing regulations. The CCDBG Act requires that all licensing inspectors, who conduct pre-licensure inspections and monitoring visits, are qualified to inspect the facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served. Accordingly, to comply with this CCDBG Act requirement and address the comments received regarding the enforcement of the licensing regulations, OSSE's licensing specialist will all complete training provided by the National Association for Regulatory Administration ("NARA"). NARA is an international professional organization dedicated to promoting excellence in human care regulation and licensing through leadership, education, collaboration, and services. NARA represents all human care licensing, including child care, older adult care, child welfare, and program licensing for services related to mental illness, developmental disabilities and abuse of drugs or alcohol.

Enforcement Action

Section 112 provides the overarching provisions for all enforcement actions a facility may be subject to and the following sections provide further detail for each specific enforcement action, where necessary. Section 112.1 sets forth a list of the various enforcement actions for violations of local or federal laws or regulations. Two commenters requested that "(g) Civil Fines;" and "(j) Criminal Prosecution" be removed from the list of possible enforcement actions. These two enforcement actions are not new actions but existed in the prior licensing regulations. Further, the authority to issue civil fines or pursue criminal prosecution is set forth in § 116. However, to provide clarity, the State Superintendent amended the language in § 112.1 by adding "or any other authorized government entity when that agency or entity has jurisdiction." This amended language is consistent with the original intent in the proposed rulemaking but eliminates unnecessary ambiguity that the proper District authority could issue civil fines or pursue criminal prosecution for violation of applicable laws and regulations. Another commenter has asked for the rationale and legal authority to not provide advanced written notice to a facility prior to summary suspension or issuance of a cease and desist order in § 112.3. A summary suspension or cease and desist order is issued in situations when children are in imminent harm. In those situations, OSSE has the right and responsibility to immediately remove children and staff from harm prior to issuing written notice.

Summary Suspension

The Facilities Act provides OSSE with authority to issue a summary suspension for imminent harm. Section 114.3 provides examples of imminent harm. Commenters did not request any amendment to the language in § 114.3 but have requested clarification regarding the standard for "poor air quality" and the meaning of "inadequate staffing". The standard for poor air quality is set by the United State Department of Labor's Occupational Safety and Health Administration and evaluated by the District's DOEE. According to *Caring for Our Children*, children are particularly vulnerable to air pollution because their systems (respiratory, central nervous system, etc.) are still developing and they also breathe in more air relative to their weight than adults do. Indoor air pollution is often greater than outdoor levels of air pollution due to a general lack of adequate air filtration and ventilation, and lingering and build up of air contaminants emitted from certain furnishings. The presence of dirt, moisture, and warmth encourages the growth of mold and other contaminants, which can trigger allergic reactions and asthma. Inadequate staffing is any deficiencies in staffing that are required to operate a licensed facility

in accordance with this rulemaking. Two stakeholders commented about the requirements set forth in § 114.6, specifically asking how soon parents should be provided with notification and recommending that the four components were re-ordered. Section 114.6 sets forth what a Licensee must do immediately, once a Notice of Summary Suspension has been delivered. All four requirements must be completed, including providing written notification to parents immediately based on the circumstance for the suspension. Because all four requirements must be completed immediately, re-ordering the components is not necessary.

C. Requirements For All Licensees

Sections 118 to 121 set forth the overarching requirements for all licensed child development facilities, specifically for supervision and the adult-to-child ratios and group sizes. The State Superintendent received a number of comments on supervision and the adult-to-child ratios.

A commenter questioned whether the reference to § 115.3 in § 118.2 was incorrect. The State Superintendent agreed, recognized the drafting error, and amended the rulemaking to strike § 115.3 and replace it with § 118.3.

Supervision

Section 120 provides the requirements for supervision of children while in the care of a licensed facility. Specifically, § 120.5 requires that a staff member should be assigned to a specific group of children, know both the names and whereabouts of the children, be physically present with the children and be able to state how many children are in their care at all time. This standard ensures that the facility knows which children are receiving care at any given time and who is responsible for directly supervising each child. One commenter recommended that this requirement not apply to child development homes, as they are often a multi-age group with one or more teachers working together. Regardless of whether a child development center or child development home, OSSE recognizes that supervision is key to ensuring safety and the prevention of injury and to maintaining quality child care. Therefore, the State Superintendent has decided to retain the requirement as proposed. Another commenter questioned whether this requirement was too specific and thereby interfered with a facility's authority to create operational policies. Similarly, this commenter also noted that § 120.7, requiring that the performance of other staff duties should not interfere with the supervision of children, also interfered with a facility's authority to create operational policies. The State Superintendent considered these comments, however, as noted above, OSSE recognizes that proper supervision is the fundamental to providing the District's children with quality child care. The requirements in Section 120 establish minimal standards necessary to provide active and positive supervision, and therefore, the State Superintendent retains the requirements as proposed. This standard ensures that the facility knows which children are receiving care at any given time and who is responsible for directly supervising each child.

Adult-to-Child Ratios and Group Size

Section 121 sets forth the various ratios and group sizes for child care centers, homes and expanded homes, based on the age and number of children served by a facility. Section 121 also offers flexibility where ratios may differ for various reasons. OSSE received a number of comments regarding the provisions in § 121.

First, in response to the ratios set forth in § 121.3(a), a commenter requested that the 1:10 ratio for child development centers is lowered to 36-60 months, instead of 48-60 months. OSSE considered these comments, however OSSE has elected not to incorporate the commenter's suggested changes. The purpose of setting ratios and group sizes is to provide healthy and safe conditions for children, as well as meet children's developmental needs. Adult-to-Child ratios should be set such that caregivers can demonstrate the capacity to meet health and safety requirements and evaluate the needs of children in their care in a timely manner.

Section 121.3(b) sets forth the ratios and group sizes for child development centers providing out-of-school-time care to school age children. One comment requested the State Superintendent re-instate the ratios and group sizes in 29 DCMR 343.5, which provided a 1:12 ratio and maximum group size of 24 for children under six (6) years old and a 1:15 ratio and maximum group size of 30 for children 6 years and older. The commenter notes that the National Afterschool Association recommends a ratio between 1:10 and 1:15, with group sizes not to exceed thirty (30). OSSE appreciates this comment as OSSE did not intend to change in ratio for child development centers providing out-of-school-time care to school age children through the proposed rulemaking but was altered due to a drafting error. Because the former ratio and group size requirements for child development centers providing out-of-school-time care to school age children meet the National Afterschool Association's recommendations, OSSE has amended 121.3(b).

Section 121.3(b) sets forth the ratios and group sizes for child development homes and expanded child development homes. One comment recommends amending the maximum group size in an expanded child development home from nine (9) to twelve (12) when there are more than four (4) children under two (2) years old. OSSE considered these comments, however elected not to incorporate the commenter's suggested changes. The National Fire Protection Association 101: Life Safety Code from the National Fire Protection Association (NFPA) recommends no more than three children younger than 2 years of age be cared for where two caregivers are caring for up to 12 children because low child to staff ratios for non-ambulatory children are essential for fire safety.

Also, in reviewing the proposed rulemaking, OSSE recognized that the maximum size of group heading in table in § 121.3(c) was unclear. A child development home can only serve up to six (6) children and an expanded child development homes can only serve up to (12) children, and therefore, OSSE struck the heading "maximum size of group" and replaced it with "maximum number of children enrolled."

One commenter questioned why child development homes have a ratio of 1:6 and a group size of twelve (12) with one child under two (2) years when child development centers must maintain a ratio of 1:4 and a group size of eight (8) with one child under two (2) years. Child development homes offer care to children from birth to age 14 in one setting and therefore have different ratios and group size then centers.

Section 121.7 provides that volunteers shall not to be used to meet ratio requirements, unless otherwise provided. OSSE received two comments requesting clarification of this requirement as

programs may rely on volunteers to help meet the ratio, such as students completing their practicum hours. A facility may use volunteers to meet ratio requirements only as set forth in §§ 121.9, 121.10, 121.11, such as during non-peak hours, nap or rest period, or substituting for an assistant teacher in a part day program. OSSE has elected not to incorporate other circumstances when a volunteer may be used to meet ratio requirements. The role that volunteers play in a licensed facility is addressed in Section 138.

Section 121.8 requires that child development centers shall have two (2) staff members supervising each group at all times. A commenter recommended that when a teacher is supervising children in public spaces, where both children and staff are under the supervision of other staff, and within ratio, a second teacher should not be required. OSSE considered these comments, however OSSE has elected not to incorporate the commenter's suggested changes. *Caring for Our Children* recommends that the adult to staff ratio should be met during all hours of operation, including indoor and outdoor play and field trips, and that no child development center should operate with fewer than two staff members if more than six children are in care, even if the group otherwise meets the adult to child ratio. The second teacher's presence is necessary to help in the event of an emergency or evacuation.

Section 121.10 provides that when children thirty (30) months and older are grouped together to nap, only one staff member is required to be supervising the children, while a second staff member should be present on the same floor and immediately available to assist. One comment questioned whether the second person may be assigned to more than one group on the same floor. Because the purpose of the second person on the same floor is to support the first teacher supervising the napping children during an emergency response or evacuation, the second person should only be assigned to one group.

In sum, the comments in this section mainly requested that OSSE decrease the adult to child ratio requirements. However, low adult-to-child ratios support the health and safety of children and allows for stronger relationships between a child and their caregiver, which is a key component of quality child care.

D. Facilities, Supplies, Equipment and Environmental Health

Sections 122 through 126 set forth the health and safety standards for a child development facility's premise. At their core, the health and safety standards in this final rulemaking are intended to make child care safer and thus lower the risk of harm to children. The State Superintendent received a number of comments in these sections, which are addressed below.

General Requirements

Section 122.3 sets forth the requirements for exits. One commenter noted that two of the four requirements, exits are visible and exits are arranged or marked so the path to exit the building is clear, contradict each another and sought clarification as to whether both requirements were necessary. OSSE adopted the commenter's suggestion that both requirements may lead to confusion, deleted "visible at all times" from § 122.3(b), added "visible and" to "arranged or marked so the path to exit the building is *visible* and clear, and re-lettered the other requirements accordingly.

Section 122.7 provides that a facility must undergo an additional fire inspection in certain situations, at their own expense. One commenter sought clarification as to why a facility is required to obtain an additional fire inspection to change the ages of the children to be served at the facility. OSSE appreciates the request for clarification. OSSE intended that a facility should obtain a new fire inspection, and Certificate of Occupancy, if there was an increase in the number of children enrolled under 30 months of age as this would impact a facility's ability to safely serve the number of children and evacuate in an emergency. Accordingly, to ensure there is not any further misunderstanding, OSSE amended the requirement in both § 122.5(c) and § 122.7(c) by striking "change the age of children" and inserted "increase the number of children under thirty (30) months of age" in its place. A new fire inspection will determine whether the facility will continue to meet all applicable fire safety codes for the new age groups and determine whether all children and staff could be safely evacuated during an emergency.

Another stakeholder commented that § 122.12 could be misinterpreted as requiring windows are covered at all times. To ensure that no such misunderstanding occurs, OSSE has further clarified this in the final rule by amending § 122.12(b) by inserting the phrase "protected with guards that prevent exit by a child." This amendment maintains the intent of this section in the proposed rulemaking, which was to ensure that children were safe from various harms within a center, such as falling down stairs, strangulation by cords, or falling out a window.

In addition, the State Superintendent deleted § 122.17 in its entirety and renumbered accordingly to clarify the requirements for electric fans because the requirements were already set forth in § 122.15(a) and therefore unnecessarily repetitive.

Section 122.24 requires that smoke detectors are tested monthly. A comment requested that OSSE amend to require testing quarterly as larger centers have external companies that conduct such testing and therefore compliance with monthly testing would be unnecessarily burdensome and costly. OSSE adopted the commenter's suggestion and replaced monthly with quarterly in § 122.24. This amendment does not alter the intent of this provision, to ensure smoke detectors were examined on a consistent basis and therefore this non-substantive change does not require further request for comment.

The State Superintendent also amended § 122.25, requirements for fire drills, by striking the word "quarterly" and inserting the word "monthly." This change reflects the current requirement for monthly fire drills as mandated by Section 405, "Emergency Evacuation Drills" of the International Fire Code (IFC 2014). The State Superintendent did not intend to change the monthly requirement but was altered due to a drafting error.

Lavatory Space

To clarify the intent of the requirement set forth in § 123.5, the State Superintendent deleted the phrase "within children's reach" and replaced it with "in a manner accessible for independent use". In addition, one commenter requested the State Superintendent amend § 123.6 to add "that are not independently using toilet facilities" to clarify that changing tables are only required for children who are not independently using toilet facilities. The State Superintendent agrees

that this change will reflect the intent of the previous wording of § 123.6 and further clarify the requirement.

Indoor Environment

Two commenters sought clarification regarding the required temperature settings set forth in § 124.2. One commenter specifically asked why the State Superintendent did not just require a facility maintain a temperature between sixty-eight (68°F) degrees to eighty-two (82°F) degrees year round. This requirement is not a new requirement and was previously required in the 29 DCMR § 340.3. In addition, the temperature requirements in the final rulemaking align with the recommended temperatures in *Caring for Our Children*, based on the standards of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), which takes both comfort and health into consideration.

Section 124.7 requires individuals remove or cover shoes prior to entering an infant play area. These individuals, as well as the infants playing in that area, may wear shoes, shoe covers, or socks that are used only in the play area for that group of infants. One commenter questioned whether OSSE, by setting this requirement, exceeded its regulatory authority. The commenter further asked whether OSSE would provide funding to facilities to comply with this requirement. Mandating that individuals either remove their shoes or place covers over their shoes is within OSSE's authority to regulate licensed child development facilities as this requirement ensures the health and safety of infants by protecting them from hazardous toxins. When infants play, they touch the surfaces on which they play with their hands, and then put their hands in their mouths. As noted in *Caring for Our Children*, facilities can meet this requirement in several ways – designating contained play surfaces for infant play on which no one walks with shoes, wearing shoes or slippers that are worn only to walk in infant play area, or wearing clean cloth or disposable shoe covers over shoes that have been used to walk outside the infant play area.

Outdoor Environment

Section 125.10 requires a facility to inspect the outdoor play area daily. One stakeholder commented that this requirement was unnecessary and unrealistic and requested this requirement be removed. OSSE considered these comments, however OSSE has elected not to incorporate the commenter's suggested amendment. First, the requirement for daily inspections of the outdoor play area is not a new requirement, as it was previously required in 29 DCMR 367.5. Furthermore, OSSE included this requirement because daily inspections of the outdoor play area are critical to ensuring children's safety, preventing deterioration of equipment and accumulation of hazardous materials within the play site, and noticing wear and tear that requires maintenance.

Equipment, Materials and Furnishings

Section 126.8 sets forth requirements for materials that are provided to children. One commenter recommended we strike "large and small muscle development" in § 126.8(f) and insert the phrase "fine and gross motor skills" in its place to align with the Head Start standards. The State Superintendent agreed with this recommendation and amended § 126.8(f) accordingly in the final rulemaking.

Section 126.15 provides three (3) requirements for each cot or crib in a facility. Three (3) comments were received on the requirement that each crib or cot is placed at least two (2) feet

apart from any other crib or cot, windows, and any radiators. One commenter specifically noted that it is not possible to meet two feet of separation from all sides in all instances. However, 126.15 only requires two feet of separation from all sides from other cribs or cots, windows and radiators when the crib or cot is in use. It further does not prohibit cribs being placed against a barrier, so long as the barrier itself is not another crib, cot, window or radiator. A space of two feet between cribs or cots will provide access by the staff to a child in case of emergency.

Sections 126.11 and 126.22 describe requirements for riding wheeled equipment. Two comments were received on this matter. During the ANPR, the State Superintendent received a number of comments as to what age was appropriate for children to begin riding bicycles and whether or not helmets should be required. The State Superintendent addressed the concerns raised in the ANPR and aligned the language with the guidance provided in *Caring for Our Children*. For example, one commenter noted that the requirement that children riding wheeled equipment must wear helmets is too expensive and burdensome. However, § 126.22 does not mandate that the Facility provide the helmets to the children, parents may bring the children's helmets. The requirement is that, if children are riding, then children must wear helmets. Helmets could be provided by the school, parents, or donated. One of the main purposes of the final rulemaking is to ensure the safety of children while in care of child development facilities. Allowing children in licensed facilities to ride wheeled equipment without protective head gear goes against the purpose of this rulemaking and the State Superintendent has therefore retained the requirements in § 126.22 and § 126.11 as set forth in the proposed rulemaking.

E. Administration and Operation

Sections 127 to 131 set forth the requirements for the administration and operation of a child development facility. The State Superintendent received a number of comments in these sections, which are addressed below.

Parent Communication

Section 127.4 describes the policies and procedures a facility must implement and provide to parent(s) and guardian(s). The State Superintendent received one comment in this section. The comment sought clarification as to whether sleep sacks are acceptable "appropriate sleep clothing" that Facilities may communicate to parents. *Caring for Our Children* provides that clothing sacks or other clothing designed for sleep may be used in lieu of blankets.

Reporting Unusual Incidents

Section 128 provides that a licensee is required to notify the State Superintendent if any unusual incident occurs. One commenter sought clarification of the State Superintendent's intent of the language "at the Facility" in § 128.3(h). Specifically, commenter asked whether the State Superintendent intended to limit this requirement to the immediate vicinity of the Facility, or if the State Superintendent intended to include incidents immediately outside of the Facility, as well. OSSE expects to be informed when any unusual incident occurs that impacts the health and safety of children and staff, whether directly on Facility premises or nearby. Section 128.1 clearly provides that the basis for notification is whether the health, safety, or welfare of any enrolled child or children is affected, not where the incident occurs. Section 128.3 provides a list of potential unusual incidents to provide facilities with context for OSSE's expectations.

However, to ensure that no further misunderstanding occurs, OSSE has further clarified this in the final rule by adding “may” to §128.3 so that it now reads “Unusual incidents may include, but are not limited to, the following”.

Another comment noted that OSSE should require training on what constitutes “reasonable cause” if that is what the reporting requirement in § 128.5 is based upon. OSSE already requires such training as provided in Section 147.2(a), which states that a licensee must provide “training to all staff upon initial hire and annually thereafter regarding the Facility's policies and procedures relating to child abuse, neglect, and risk to a child's health, safety or welfare, including to whom and how to report suspected abuse, neglect, or risk to a child's health, safety, or welfare.”

Recordkeeping Requirements for Children

Section 130 provides the recordkeeping requirements for a child enrolled at the facility. These records are necessary to protect the health and safety of children in care as operational control requires that information regarding each child in care be kept and made available on a need-to-know basis.

One commenter requested that OSSE clarify how we define “complete record” in § 130.3 and if “complete record” includes all documents listed in § 130.2. A complete record includes all documents listed in § 130.2 Another commenter sought clarification as to whether the record may be maintained digitally. One commenter noted that the language “in the form provided by or approved by OSSE” indicates that the record may only be maintained in hard copy. However, the final rule maintains that records shall be maintained “in a secured location with limited access,” but do not specifically dictate the form they are to be maintained. Accordingly, a facility may maintain records in hard copy or digitally, so long as the records are maintained in a secure location with limited access.

Another commenter sought clarity as to whether a record of the daily menu plan was required if children were bringing their own food from home, or if a document shared with families providing the USDA nutrition requirements was acceptable. In response to this request for clarification, OSSE added “if the facility provides any meals or snacks to children” to § 130.8.

Recordkeeping Requirements for Staff

Similar to 130, the following section, § 131, provides the requirements for records a Facility must maintain on all staff members. The State Superintendent received comments that the information required for the staff member's record contained substantial personal information. One commenter questioned whether such information was necessary. Another commenter asked what if the staff member refuses to provide the required physical exams in § 131.5. The State Superintendent considered these comments and made one minor clarifying change by striking “results of” and inserting “Documentation of” in its place for §§ 131.5(a) and (b). Complete identification of staff, whether paid or volunteer, is an essential step in safeguarding children in care. *Caring for Our Children* emphasizes that maintaining complete records on each staff person employed at a facility is a sound administrative practice. In addition, OSSE may use these records to ensure applicable licensing requirements are met, such as identifying information, educational qualifications, health assessment on file, record of continuing education, signed

statement of agreement to observe the discipline policy, and guidelines for reporting suspected child abuse, neglect, and sexual abuse. Maintaining results of staff member's pre-employment physical examinations, annual physical examinations, and immunizations are necessary to ensure children's health and safety.

Section 131.4 also addresses the records a facility should maintain for each volunteer, which includes standard identifying information, job description, and results of a comprehensive background check. One commenter recommended that phrase "who work directly with children on an on-going basis" should be added to § 131.4 to clarify which volunteers were required to provide such information. Another commenter sought clarification as to how the State Superintendent defined one who volunteers on an "on-going basis" in § 131.5. Both comments are addressed in the discussion of *Section 138: Volunteers and Aides* below.

F. Staffing

Sections 132 through 136 address staff members' suitability for employment in a child development facility, including criminal background checks, traffic record checks, and drug and alcohol testing provisions. The State Superintendent received a number of comments in these sections, which will be addressed below.

First, one commenter suggested that the language in § 132.1 was offensive to the child care community. OSSE amended the language by striking "suitable" and "of moral character and dedication." This amendment did not change the intent of § 132.1 but rather removes ambiguous and potentially offensive language.

Criminal Background Checks

Section 133 sets forth the requirements for criminal background checks of all staff members. The CCDBG Act, and its implementing regulations, requires all child care staff members (including prospective staff members) of all licensed, regulated, or registered child care providers to have a comprehensive background check, unless they are related to all children in their care. The CCDBG Act set forth this requirement based on the belief that "all parents, regardless of whether they receive CCDF assistance, deserve this basic protection of knowing that those individuals who have access to their children do not have prior records of behavior that could endanger their children."

In the proposed rulemaking, § 132.2 provided that for Sections 132 to 139, a staff member shall include Center Directors, Teachers, Assistant Teachers, Caregivers, and Volunteers. In the final rulemaking, OSSE has deleted this provision to avoid confusion as "staff members" is defined in § 199 and "staff members" required to submit to criminal background checks were described in § 133.1. However, OSSE did amend § 133.1 to strike "section" and insert in its place "Sections 133 and 135" to clarify that *§135: Results and Appeals* applied to individuals required to submit to criminal background checks in § 133.

One commenter asked whether the criminal background check requirement for any individual residing in a child development home or expanded home in § 133.2 extends to college students who may not be present during the hours of operations. The CCDBG Act, and its implementing

regulations, clearly extends the background check requirement to all adults residing in child development homes and expanded homes, regardless of whether they may or may not be present during the hours of operations.

Section 133.4 provides that the State Superintendent shall make a good faith effort to provide notification of the results of the criminal background check within forty-five (45) days. One commenter requested that the State Superintendent shall provide notification within fifteen (15) days, not forty-five (45) days. Another stakeholder commented that a good faith effort is not an acceptable standard because waiting forty-five (45) days after an interview will impact their hiring process. OSSE appreciates these comments and recognized the commenters' concerns. However, OSSE will retain the proposed language in the final rulemaking. Section 658H(e)(1) of the CCDBG Act requires that once a child care provider submits a background check request, OSSE must carry out the request as quickly as possible, and further that the process must not take more than forty-five (45) days after the request was submitted.

Section 133.7 sets forth the information a staff member shall provide in order to complete a criminal background check. The State Superintendent received comments asking why OSSE needed fingerprints. In addition, one commenter requested OSSE remove the request for a social security number. OSSE did not make any changes to the final rulemaking based on these comments as both are necessary to complete all five federal statutorily mandated components of the required comprehensive background check: "(1) A search of the State criminal and sex offender registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (2) A search of the State child abuse and neglect registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (3) A search of the National Crime Information Center; (4) A Federal Bureau of Investigation (FBI) fingerprint check using the Integrated Automated Fingerprint Identification System; and (5) A search of the National Sex Offender Registry."

In addition, OSSE amended § 132.3(a), the components of a criminal background check, to maintain consistency with the federal regulations by adding "with the use of fingerprints being required in the State where the staff member resides, and optional in other States." ACF added this language to the federal regulations in response to comments emphasizing that technology does not exist to allow States to send fingerprints electronically to check other States' repositories.

Traffic Records Check

The State Superintendent also received comments seeking further clarification of the traffic records check process, specifically asking for timing and consequences. OSSE recognizes that there is a need to further address what the traffic record check shall include, how the information will be assessed in determining eligibility, the timing and how results will be provided. OSSE will address this in future rulemaking. Until then, OSSE recommends that stakeholders refer to *Caring for our Children* for further guidance on this matter, and any other area that may be ambiguous.

Suitability Results And Appeals

The State Superintendent received comments asking why the State Superintendent, and not the Facility is making the determinations as to whether an individual is eligible or ineligible to work. In addition, one commenter noted that if there is a concern on a criminal background check, they should be informed of the concern so that they could make a final determination as to whether or not they would like to employ the individual.

In order for the protection of privacy of the results, the CCDBG Act requires the state lead agency (OSSE) to make determinations regarding a child care staff member's eligibility for employment. The federal law further requires that OSSE provide results of the background check to the child care provider in a statement that indicates only whether the staff member is eligible or ineligible, without revealing specific disqualifying information. If the staff member is ineligible, the Lead Agency must provide information about each specific disqualifying crime to the staff member, as well as information on how to appeal the results of the background check to challenge the accuracy and completeness.

In addition, the State Superintendent has made three non-substantive changes in § 135. First, OSSE amends § 135.6 to strike "OAH" and replace it with the Commission on Human Rights to comply with the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2016, signed October 31, 2016 (D.C. Act 21-521; 63 DCR 13597 (November 4, 2016)). Second, the State Superintendent is striking "licensee" and replacing it with "staff member" in § 135.5(b). This amendment is necessary to correct an unintended error as right to appeal described in the Notice of Ineligibility for Employment is intended for the staff member, not the licensee. Finally, the State Superintendent is updating the number of days a staff member has to request a hearing in § 135.5(b) from ten (10) days to thirty (30) days to correct a drafting error and maintain consistency with § 135.6, which provides a staff member may request an appeal not later than thirty (30) days after receiving the notice described in § 135.5.

Required Drug And Alcohol Testing Program

Section 136 provides the requirements for drug and alcohol testing. One commenter requested clarification regarding the State Superintendent's policy regarding the authorization of the use of a Schedule I drug, marijuana, in licensed child development facilities. The District's Department of Human Resources ("DCHR") has determined that Initiative 71 has no impact on the District government's current enforcement and application of employment related drug testing requirements. Furthermore, any recipient of federal funding, including funding under the Child Care Development Block Grant ("CCDBG") Act of 2014, effective November 19, 2014 (Pub.L. 113-186; 42 U.S.C. §§ 9858 *et seq.*) is required to comply with the Drug Free Workplace Act of 1988, effective (Pub.L. 114-165; 41 U.S.C. § 8103 *et seq.*) and its implementing regulations. The Drug Free Workplace Act of 1988 mandates that all federal grantees provide drug-free workplaces as a condition to receiving a federal grant. A drug-free workplace requires a policy that the unlawful use of a controlled substance is prohibited in the covered workplace. Marijuana is a controlled substance. The Federal guidance explicitly states that grants to school districts or other educational organizations are covered by the Drug Free Workplace Act of 1988 and the statute does not provide a basis on which school districts or other education-related grantees may be exempted from the requirements of the regulations. Therefore, if a facility allows an employee who has tested positive for marijuana to continue performing their duties at the facility without a

first producing proof of substance abuse treatment and a valid negative drug test result, the Center's award of federal funding shall be at risk of suspension of payments or termination.

Pursuant to § 136.17, staff members are required to submit to an alcohol or controlled substance test when there is reason to believe the employee has violated the alcohol or controlled substance policy. One commenter requested the State Superintendent provide more guidance around the conditions leading to a reasonable suspicion referral in § 136.17 since both alcohol and marijuana are legal substances. Although, both drinking alcohol and the use of marijuana in certain circumstances are legal, the consumption of alcohol and the use of marijuana is prohibited at all times when staff members are responsible for the supervision of children. Therefore, a reasonable suspicion referral should be made if there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of substances, including alcohol and marijuana. While both drinking alcohol and the use of marijuana in certain circumstances are legal, consumption or use may prevent staff members from providing appropriate care to infants and children by impairing motor coordination, judgment, and response time.

Section 136.18 requires that a staff member shall be subject to a post-accident test when involved in accidents under certain conditions. A commenter asked for clarification as to whether the condition in § 136.18(d) requires that the vehicle the staff member was operating in an accident must be a school-owned vehicle. This provision does not require the vehicle be a school-owned vehicle. Rather, the requirement is for post incident testing following an accident where a staff member receives a citation or moving traffic violation operating a vehicle, whether school owned or not, while performing any function while on duty.

Aides And Volunteers

Section 138 sets forth various requirements for aides and volunteers, including duties of a volunteer and background check requirements. The State Superintendent received a number of comments in this section.

One commenter noted that a volunteer was not an aide and therefore should not be required to participate in ongoing in-service training and continuing education requirements, as provided in § 138. First, to clarify, "on-going in-service training" is not the same as the professional development requirements set for in § 139. Volunteers are not required to meet the requirements in § 139 as the requirement is placed on *paid* staff members. *Caring for our Children*, however, recommends that volunteers should participate in on-the-job training, including a structured orientation to the developmental needs of young children. Staff training in child development and/or early childhood education is related to positive outcomes for children. This training enables the staff to provide children with a variety of learning and social experiences appropriate to the age of the child. Accordingly, the requirement for volunteers to participate in "on-going in-service training" means that volunteers should attend any in-service training provided on an on-going basis by a facility, however, although a structured orientation to the developmental needs of young children is encouraged, a facility is not required to develop on-going in-service training specifically for volunteers.

Section 138.4 requires that aides and volunteers who work directly with children on an on-going basis are subject to the background check requirements. Two stakeholders commented that the requirement for volunteers to complete background checks as burdensome and potentially prohibitive. Specifically, one commenter noted that a volunteer who is in the classroom for two hours a week under constant supervision of the teacher would be subjected to higher level of scrutiny than a chaperone who would be on the field trip with children, potentially unsupervised. Another commenter questioned whether a parent chaperone would meet the requirement for “on-going basis.” Volunteers who provide infrequent and irregular service that is supervised or parent volunteers who are supervised do not meet the standard of “on-going basis.” Parent chaperones should not care for children other than their own unsupervised. Volunteers who come into a child care facility to help with a classroom party, read to students, or assist with recess are not caring for or supervising children for a child care provider. Rather, volunteers in the situations described above are providing additional assistance under supervision of the primary staff member.

While, the CCBDG Act and its implementing regulations have not specifically mandated background checks of volunteers, the CCDBG Act provided states with flexibility in developing screening processes for volunteers. ACF has clearly emphasized, however, that volunteers who have not completed a background check may not be left unsupervised. ACF further encourages states to require that volunteers who have not had background checks be easily identified by children and parents, for example through visible name tags or clothing. The District already set forth background check requirements for volunteers pursuant to CYSHA, which requires that volunteers, who work without any monetary or any other financial compensation in an unsupervised position for a child development facility, must submit to criminal background checks. Therefore to align with the current practice and definitions in the District for volunteers, OSSE has deleted “on an on-going basis” in §138.4 and replaced it with “meet the standard in Section § 133.1.” OSSE also deleted “on an on-going basis” in §138.8 and replaced it with “are not provided unsupervised access to children who are cared for or supervised at a Facility.” In addition, OSSE deleted “on an on-going basis” in § 131.5(b) and inserted the following in its place “whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility”. OSSE also inserted ““whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility” in § 131.4. These non-substantive amendments maintain the intent of the proposed rulemaking and clarify questions raised about the volunteers who support the facilities in the District.

Finally, CYSHA further provides that volunteers may use the same criminal background check for a period of 2 years. Therefore, to align with CYSHA and current practice in the District, OSSE is adding “A volunteer may use the same criminal background check for a period of 2 years” to § 138.4. This new language is necessary to clarify that volunteers must continue to comply with the more stringent requirement in D.C. Code § 4-1501.5(e).

Professional Development

Section 139 sets forth the professional development requirements for paid staff members. Commenters raised concerns about the number of trainings required, in the time periods provided, and the potential additional cost and disruption to obtain and attend the trainings. The

State Superintendent appreciates these comments and recognizes stakeholders concerns given that these requirements are a significant shift in the professional development requirements. However, OSSE will not incorporate any of the commenters' suggested changes.

A comment requested clarification as to which trainings were required every single year, versus upon hire. As provided in § 139.6, annual training must include the health and safety standards listed therein. Another commenter requested clarification as to who would provide the training, the licensee or OSSE, and if the licensee, whether experienced internal school staff may provide the training. While OSSE itself will not provide the training, OSSE will widely publicize the availability of these health and safety trainings, including on-line and in-person professional development opportunities. Additionally, internal school staff may provide the training if school staff is an OSSE approved trainer pursuant to § 139.9. The federal regulations have emphasized the overarching importance of ensuring that staff members understand how to preserve the health and safety of children in their care. Recognizing that there may be a cost to obtaining trainings, ACF has provided several no-cost or low-cost trainings at this web site: <http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/health/ccdbg/ccdbg-required-health-safety-training.html>. However, OSSE and ACF do not advocate the exclusive use of online trainings. A mixed delivery training system that includes both online and in-person trainings can meet the varied needs of staff members.

The federal regulations issued on September 30, 2016 required that staff members who provide direct care for children must be supervised until training is completed in pediatric first aid and CPR, safe sleep practices, standards precautions to prevent communicable disease, poison prevention, and shaken baby syndrome/abuse head trauma. In order to comply with this federal requirement, OSSE added § 139.4 and renumbered the following sections accordingly, which provides:

- 139.4 The following critical health and safety training must be completed before staff members are allowed to care for children unsupervised:
- (a) Prevention of sudden infant death syndrome and use of safe sleep practices, as applicable;
 - (b) Prevention of shaken baby syndrome and abusive head trauma, as applicable;
 - (c) First aid and CPR;
 - (d) Poison prevention, including the handling and storage of hazardous materials and the appropriate disposal of bio contaminants; and
 - (e) Prevention and control of infectious diseases, including immunization.

This non-substantive amendment maintains the intent in the proposed rulemaking to ensure staff members are adequately training to care for children and to comply with the CCDBG Act's implementing regulations.

OSSE also received a comment requesting clarification as to whether a training that is not specifically applicable to the children served by the staff member is required, specifically referencing the training on sudden infant death syndrome. The proposed rulemaking sets forth language that reflects necessary content variation within required topic areas. As provided in §§ 139.2(c) and (d), the trainings shall be included “as applicable.”

The State Superintendent received two comments specific to requirements for training in first aid and CPR. One commenter sought clarification regarding the first aid and CPR training requirement. The commenter correctly notes that § 139.2 requires all staff members receive training in first aid and CPR within thirty (30) days of hire, but § 150.2 requires two (2) staff members readily available to administer first aid or CPR at the Facility at all times. The State Superintendent appreciates the comment and recognizes how these two sections may seem in conflict. The State Superintendent notes, however, that § 150.1 requires all staff members possess current and valid certification in first aid and CPR, which aligns with the training requirements in § 139.2. The intent and purpose of § 150.2 was to ensure that a facility is appropriately staffed in case of an emergency, not to set requirements for the number of staff members trained. Another commenter requested that the requirement for training in first aid and CPR was moved to § 139.3, the orientation trainings done within ninety (90) days of hire, because the facility would need an outside vendor. While OSSE recognizes the challenges presented in obtaining an outside vendor, training in first aid and CPR, and the confidence to use these skills, is critically important to the outcome of an emergency situation. Accordingly, OSSE will retain the requirement for first aid and CPR within thirty (30) days of hire.

G. Program Activities for Healthy Development

Sections 140 through 141 set forth the activities and curriculum for children’s healthy development. Specifically, § 140.1 requires that a licensee implement a curriculum that is consistent with the District of Columbia Early Learning Standards. Two stakeholders commented on this requirement. One commenter specifically noted that the standards are extensive and it is not clear how the term “consistent” will be interpreted. Both commenters recommended that this requirement should be removed from the regulations and that the standards should be issued as guidance. Neither § 140.1 nor the definition of “District of Columbia Early Learning Standards” set forth specific requirements for the implementation of the standards. The “District of Columbia Early Learning Standards” provides a framework for the desired outcomes and content for the education of the District’s youngest learners but the standards do not dictate the actual curriculum, classroom practices, and teaching strategies that licensed facilities use. While the District of Columbia Early Learning Standards are an important component of the District’s comprehensive, high-quality system of early care and education, OSSE recognizes stakeholders’ concerns. Therefore, in response to these comments, this final rulemaking does not adopt § 140.1 that was included in the Notice of Proposed Rulemaking. However, this final rulemaking does reserve § 140.1 for future rulemaking after further consideration and consultation with stakeholders. In addition, this final rulemaking does not adopt the definition “District of Columbia Early Learning Standards” but will consider adding it back in future rulemaking after further consideration and consultation with stakeholders.

Additionally, OSSE strikes “in alignment with District of Columbia Early Learning Standards” from § 140.2(a). OSSE also strikes “are consistent with District of Columbia's Early Learning Standards, assessed” in 165.5(c) and 166.3(b) and inserts “which promotes positive development and learning” in its place. These non-substantive amendments maintains the intent in the proposed rulemaking not to enforce a singular curriculum but to provide guidance around appropriate standards and ensure facilities are implementing a curriculum that promotes positive development and learning. These non-substantive amendments also ensure no further misunderstanding occurs.

H. Health Promotion and Protection

Sections 142 through 161 set forth the basic health standards that must be in place to protect children, no matter what type of facility they attend. The State Superintendent received a number of comments in this area, which are addressed below.

Supporting Healthy Child Development

Section 143.2 sets forth the required amount of physical activity a licensee shall provide a child. Section 143.6 further provides that a licensee shall limit the amount of screen-time provided to a child. One stakeholder commented that both requirements were beyond the scope of the regulations. Pursuant to D.C. Official Code § 7-2036(a)(1), OSSE maintains the authority to set forth the minimum standards of operation concerning, among other things, the safety and health standards. Both physical activity and screen time directly related to a child's health and development, and therefore are within the scope of OSSE's regulatory authority.

Diapering

Section 145.1 requires that a licensee maintain a diaper changing area within arm's reach of a properly maintained a source of running water and soap that is not in the kitchen or eating area. One commenter requested that § 145.1 is amended to only apply to Centers, as it is not realistic for homes to meet this requirement. *Caring for our Children* has emphasized the importance of facilities limiting the opportunity for the transfer of contaminants at changing areas, including ensuring that sinks are within arm's reach of where the diapering takes place to avoid transfer of contaminants to other surfaces en route to washing the hands of staff and children. OSSE recognizes the requirement that changing tables are within arm's reach may not be entirely feasible for all child development homes. Accordingly, OSSE amends § 145.1 by striking the phrase “arm's reach” and replacing it with “close proximity.” The amended language maintains OSSE's intent in the proposed rulemaking to have sinks close by to prevent the spread of contaminants and disease and the prior language in 29 DCMR § 390.1.

Emergency Preparedness And Response Planning

One commenter sought clarification as to whether a cell phone would meet the requirements set forth in § 148.8. A cell phone would meet the requirements. No change is required to clarify this provision.

First Aid And CPR

Subsection 150.2 generally requires that a licensee have at least two (2) staff members available to administer first aid and CPR. One commenter raised the issue that a home provider may only

have one staff member, the caregiver, on site and therefore would always be out of compliance with the requirement for two (2) staff members. The State Superintendent appreciates this comment and acknowledges that this may be true in many homes. The State Superintendent did not intend to require more than one person in a home and has amended § 150.2 by adding “unless a caregiver in a child development home is serving no more than six (6) children with no more than two being under the age of two.”

Inclusion, Exclusion, And Dismissal Of Children And Staff Due To Illness

Section 151 sets forth the requirements for excluding both children and staff from the facility due to illness. Two stakeholders commented that requiring a child or staff member, who exhibited symptoms in § 151.2 and was treated by a doctor, return to a facility with written permission from a licensed health practitioner is burdensome and may keep the student or staff member out of school longer than necessary. Written permission is necessary to ensure the child will not spread infectious agents to other children in care. Furthermore, that the requirements in § 151 for written permission is not a new requirement for children and is what is currently required in 29 DCMR § 326.8. As recommended by *Caring for our Children*, OSSE extended this requirement to staff because staff also can spread infectious disease.

Subsection 151.5 provides that if a child exhibits “mild symptoms” of illness, a facility, in consultation with the child’s parents, shall decide if the child should go home based on the three factors provided. One commenter requested that the State Superintendent define or provide clarity for the phrase “mild symptoms”. The State Superintendent appreciates this comment and request for clarity. Section 151.3 provides symptoms that a licensee should look for as indication of an illness that may require exclusion. OSSE intended that “mild symptoms” should be interpreted as symptoms that do not indicate an illness listed in § 151.3.

Medication Administration And Storage

Subsection 153.1 prohibits a licensee from administering medication to a child in care unless the parent provides permission, the administration of medication is approved by a licensed health care practitioner, and the staff member has completed an approved medication administration training program. One commenter requested the State Superintendent provide at least two (2) years to allow staff members to receive training. The CCDBG Act requires that staff members in licensed facilities have successfully complete this training by September 30, 2017. Another commenter recommend the State Superintendent add a requirement for renewal of the training every two years. OSSE appreciates the comment; however, it is not necessary to insert additional regulatory language to address the comment. Similar to certification in First Aide/CPR, the approved entity that certifies an individual’s successful completion of medication administration training program shall set forth how long certification is valid and how often training shall be renewed.

A commenter sought clarification of the requirement prohibiting a Licensee from administering medication to a child if the child had not had at least one dose of the medication at home. The commenter asked whether it was one dose that day or one dose, ever. To ensure that no such misunderstanding occurs, OSSE has further clarified this in the final rule by adding “at a previous time or date” to Subsection 153.2.

Prevention of and Response to Food Allergies

Subsection 154.1 requires a facility to have a written plan for each child with a food allergy from a child's parents or licensed health care practitioner which includes instructions regarding which food a child is allergic to and a treatment plan. One commenter requested OSSE align this with the CACFP medical non-disabling statement form, which asks a medical authority to state which food items shall be omitted and provide suggested substitutions. The CACFP medical non-disabling statement form is used by the facility to support CACFP meal reimbursements claims. While OSSE recognizes that a medical authority must sign the CACFP medical non-disabling statement, OSSE has not inserted additional regulatory language to address the commenter's request because the CACFP medical non-disabling statement form and the written plan serve different purposes.

Food Service

Subsection 155.2 requires all menus and foods actually served are consistent with the meal pattern requirements and nutrition standards specified by CACFP. One commenter requested clarification as to the difference between a snack and meal. OSSE recommends referring to CACFP for guidance on the difference between a snack and meal.

Subsection 155.15 requires that a licensee ensures appropriate meals and snacks are provided to children in their care. One commenter requested the State Superintendent amend the subsection to add a reference to the Child and Adult Care Food Program ("CACFP"). Although, the proposed rulemaking already referred to CACFP in § 155.2, OSSE accepted the recommendation to add a reference to CACFP in § 155.15. Adding a reference to CACFP will clarify that OSSE intended meal and snack to be interpreted consistently with CACFP.

Subsection 155.4 requires a licensee to have one staff member who is certified as a Food Protection Manager, with valid certification and photographic identification. Two commenters noted that the Department of Health no longer issues a photographic identification to a Food Protection Manager. Accordingly, OSSE has deleted "photographic identification" from § 155.4.

Infant Feeding

Subsection 156.2(i) requires that a Licensee discard all unused formula and breast milk after each feeding. One commenter requested that the State Superintendent provide a timeframe for when discarding unused formula and breastmilk would be necessary. OSSE appreciates this comment and has clarified the requirements for discarding unused formula and breastmilk.

Section 156.2(i) now reads:

- (i) After each feeding, discard any unused:
 - (1) Formula within one hour of feeding; and
 - (2) Breast milk, if less than one ounce, otherwise return remaining breast milk to the parent(s) or guardian(s);

This non-substantive amendment aligns with the recommendations from *Caring for Our Children* and maintains OSSE's intent as set forth in the proposed rulemaking to ensure that facilities are using safe approaches to feeding infants while in their care.

One commenter recommended the language in § 156.2(m) is amended to prohibit microwaving breast milk, unless parents have been notified in writing. OSSE will not accept the commenter's recommended language. Microwaving breastmilk is prohibited because uneven hot spots in the milk may cause burns in the infant and excessive heat may destroy beneficial components of the milk. Subsection 156.2(m) provides that parents must be notified in writing if a facility plans to microwave liquids and foods, *other* than breastmilk.

Swimming and Water Play

Section 157 provides the requirements for swimming and water play. As noted in *Caring for Our Children*, drowning is the second leading cause of unintentional injury-related death for children ages one to fourteen. Children can drown in as little as two inches of water. A prior study of drowning deaths of children younger than five years of age attributed the highest percentage of drowning reports to an adult losing contact or knowledge of the whereabouts of the child. OSSE set forth the requirements in § 157 because timely administration of resuscitation efforts by a trained staff member trained is critical. The circumstances surrounding drowning and water-related injuries of young children suggest that staffing requirements and environmental modifications may reduce the risk of this type of injury. Further, studies have shown that prompt rescue and the presence of a trained rescuator at the site can save about 30% of the victims without significant neurological consequences.

OSSE received three comments on § 157. Two stakeholders sought clarification of the requirements in § 157.7 and § 157.8 regarding the ratios, training and certification for water play and whether such training and water play was required for water table play. OSSE has considered these comments and recognizes that phrase "water activities" is not clear as the phrase includes anything from playing at water tables to swimming. OSSE intended to distinguish requirements for proper supervision during various water activities in the proposed rulemaking; however, further clarification in the final rulemaking is necessary based on the comments received.

To clarify the requirements for swimming or playing in water, OSSE strikes § 157.7 and renumbers the following subsections accordingly. In § 157.8, which requires adults certified as lifeguard or water safety instructor, OSSE strikes the phrase "all children's water activities" and inserts "children are swimming or playing in water, including baby pools, wading pools, and full-depth pools" in its place. Finally, in § 157.10(a), which is now § 157.9(a), OSSE strikes "Children are supervised in accordance with supervision provisions of Subsection 157.7" and inserts "(a) At least one (1) adult for every six (6) children shall be certified in pediatric First Aid and CPR and in attendance. Adult-to-child ratios as set forth in Section 121 shall be maintained" in its place. These non-substantive amendments clarify the varying requirements for swimming and water table play while maintaining OSSE's intent to distinguish requirements for proper supervision during various water activities.

Finally, one commenter sought clarification as to whether prohibiting the use of bottles, cups and glasses during water table play in § 157.10(h), included the use of plastic cups. As recommended by *Caring for Our Children*, the rulemaking prohibits the use bottles, cups and glasses during water play because the presence of these items encourages children to drink from them. Contamination of hands, toys, and equipment in the room in which play tables are located may play a role in the transmission of diseases in child care settings so prohibiting items that can lead to contamination is necessary to ensure the health and safety of children in care.

Transporting Children

One commenter requested OSSE provide further criteria related to supervision of transporting children, specifically the appropriate ratios during transport. Ratios during transport have been addressed. Subsection 121.2 specifically states that minimum adult-to-child ratios shall be maintained in vehicles during transport.

I. Additional Requirements For Licensed Centers

Child development centers must meet the all the requirements for all licensed child development facilities. In addition, licensed child development centers must meet the additional requirements set forth in Sections 162 to 166. The State Superintendent received four comments about child development centers.

Requirements for Center Directors

Section 164 addresses the qualifications and responsibilities of Center directors. Specifically, § 164.6 requires that a center director complete twelve (12) hours of professional development annually. One commenter noted that Center Directors, who have been Directors for a long time, do not need to participate in annual professional development approved by OSSE. While OSSE values and recognizes the commitment to children of Center Directors who have been Center Directors for a long time, research has shown that coursework and training has a measurable and positive effect on quality child care. OSSE considered these comments, however OSSE has elected not to incorporate the commenter's suggested changes. An individual's experience as a Center Director must be supplemented by continuing competency-based training to determine and provide whatever new skills are needed to care for children in child care settings. Research, best practices, and knowledge base are constantly changing and it is essential that center directors, as the instructional leaders for the program, stay current with information. Maintaining the annual professional development requirements as set forth in the proposed rulemaking is consistent with the emphasis the CCDBG Act has placed on professional development which is designed to prevent harm to children and ensure optimal development and learning.

Teacher Qualifications

One commenter appreciated the waiver in § 164.3 that applies to center directors who have served as a center director continuously for ten (10) years and requested that the waiver also apply to teachers who have served as a teacher continuously for ten (10) years. OSSE intended this waiver to also apply for teachers who continuously have served as a teacher continuously for ten (10) years, however that was omitted in the proposed rulemaking due to a drafting error. This provision is now in the final rulemaking in § 165.4 and the following sections were renumbered accordingly. Additionally, in reviewing the proposed rulemaking, OSSE recognized a drafting

error in § 164.1(d) in its reference to achieving “compliance with (a), (b), or (c).” To correct this drafting error, OSSE combined § 164.1(d) with § 164.1(c) deleted the reference to “(c).” This non-substantive amendment maintains the intent to provide center directors with time to comply with the requirements of the final rulemaking as demonstrated by consistent requirements for teachers in § 165.1(d).

J. Additional Requirements For Licensed Child Development Homes

Child Development Homes (“homes”) must meet the all the requirements for all licensed child development facilities. In addition, licensed homes must meet the additional requirements set forth in Sections 167 to 168. The State Superintendent received two of comments about homes.

In § 167.7 and § 167.8, the State Superintendent requires that licensed weapons are inaccessible to children and that parents are provided notice that a weapon is on the premise. During the ANPR, one stakeholder specifically requested that OSSE consider adding provisions around weapons in homes caring for children, similar to many other states. After careful consideration and research, OSSE accepted the recommendation and added § 167.7 and § 167.8 to the proposed rulemaking. In response to the new language in the proposed rulemaking, another commenter applauded OSSE for including such language around weapons. However, the State Superintendent also received a comment that questioned whether OSSE was violating the privacy rights of caregivers by requiring disclosure of weapons in a child development home or expanded home. However, a caregiver’s expectation of privacy is outweighed by the public’s interest in ensuring the safety of children in their care. Like background checks, parents deserve the basic protection of knowing whether or not their children may have access to weapons while in child care and whether or not the individual who has access to their child has a weapon that could endanger their children. While this is a new requirement for caregivers in the District, the District of Columbia is joined by other states that require the same kinds of disclosures when weapons are present in homes.

Subsection 168.1 describes the baseline qualifications of caregivers in homes. Subsection 171.1(a) requires that in order to qualify as a caregiver, one must have earned a high school diploma and shall earn a Child Development Associate (“CDA”) credential within two (2) years of the effective date of the final rulemaking. One commenter asked that OSSE amend § 171.1(a) to provide a caregiver with four (4) years instead of two (2) years from the effective date of this regulation to earn a CDA credential. OSSE considered this comment, however OSSE has elected not to incorporate the commenter’s recommendation. On average, it takes approximately 6 months to complete a CDA credential. Two (2) years from the effective date of this regulation is sufficient time.

Subsection 168.2 sets forth the duties of a caregiver. Specifically, § 168.2(c) requires that a caregiver supervise enrolled children at all times. One comment recommended that OSSE replace the word “supervise” with “within sight and sound.” OSSE adopted the commenter’s suggestion, and inserted “within sight and sound” in § 168.2(c).

Finally, § 168.4 requires that if a caregiver is not physically present, a qualified back-up caregiver, who meets the requirements and qualifications, must be designated to assume full

responsibility of the facility's operations. One commenter requested clarification regarding what requirements and qualifications a qualified back-up caregiver must meet. Section 168.1 requires a caregiver have a high school diploma and a CDA credential, complete twelve (12) hours of professional development, and complete all required health and safety trainings. OSSE recognizes that substitutes are difficult to find for homes, however, because the risk to children from care by unqualified caregivers is so high, developing a qualified substitute pool or establishing relationships with alternative homes is essential for home operation. Accordingly, OSSE has amended § 168.4 to clarify specifically that a qualified back-up caregiver should have a CDA credential, training on basic health and safety topics, and be subject to the criminal background and child protection register checks as required in § 133. These amendments are made in response to comments requesting clarification and are non-substantive as they maintain OSSE's intent of the proposed rulemaking to ensure back-up caregivers were qualified to provide care.

K. Additional Requirements For Licensed Expanded Child Development Homes

Expanded child development homes ("expanded homes") must meet the all the requirements for all licensed child development facilities. In addition, licensed expanded homes must meet the additional requirements set forth in §§ 169 to 171. The State Superintendent received two of comments about expanded homes.

First, a commenter noted that the language in § 169.4 is a repeated section. OSSE acknowledges that §169.4 reiterates the requirement set forth in § 167.9 for homes. Accordingly, OSSE has deleted the requirement in § 169.4 and added clarifying language in § 167.9 to ensure the same requirement was set forth for caregivers operating both homes and expanded homes. OSSE also reviewed the language in § 169 to ensure there were no other repeated sections.

Sections 170 and 171 set forth the baseline qualifications and responsibilities of caregivers and associate caregivers in expanded homes. One commenter requested clarification regarding the requirements for a caregiver in an expanded home in § 170.2(b). Specifically, the commenter asked whether the only pathway to opening an expanded home was if the caregiver had previously operated a child development home. There are, however, two pathways to opening an expanded home, as the primary caregiver, having operated a home *or* have served as a Center Director or Teacher in a licensed center. It is worth noting that the requirements in § 170.2(b) are not new requirements and is what is currently required of caregivers seeking to open an expanded home.

VI. Conclusion

The State Superintendent greatly appreciates the many comments that the public submitted throughout the process. OSSE has thoroughly considered all the comments and made changes accordingly. The entire rulemaking process has resulted in a more effective, clear, and transparent final rulemaking. OSSE recognizes that implementing these updated licensing provisions may be challenging for some parties, but this effort is necessary to improve child care in the District for the benefit of our children.

Effective Date

These rules were adopted as final on November 15, 2016 and shall become effective on the date of publication of this notice in the *D.C. Register*. Pursuant to the CCDBG Act, facilities shall be in compliance with health and safety trainings and criminal background check requirements for all current and new staff members by September 30, 2017. Compliance with qualifications for Center Directors, Teachers, Assistant Teachers, and Caregivers are as set forth in this final rulemaking. Compliance with all other provisions in this final rulemaking will be determined through OSSE's review of applications for licenses.

Chapter 1, CHILD DEVELOPMENT FACILITIES: LICENSING, of Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is added to read as follows:

CHAPTER 1 CHILD DEVELOPMENT FACILITIES: LICENSING

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100 AUTHORITY AND PURPOSE

- 100.1 In accordance with Section 7 of the Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code § 7-2036 (2012 Repl. & 2015 Supp.)) (“Facilities Act”), the Office of the State Superintendent of Education (“OSSE”) shall administer and enforce this chapter.
- 100.2 The purposes of this chapter include the following:
 - (a) Protecting and promoting the health, safety, welfare and positive development of children who receive services in licensed Child Development Facilities;

- (b) Defining the general procedures and requirements to obtain and maintain a license to operate a Child Development Facility; and
- (c) Setting forth the minimum standards applicable to the District's licensed Child Development Facilities.

101 APPLICABILITY

- 101.1 A Child Development Facility that is licensed ("Licensee"), required to be licensed, or applying for a license shall comply with the requirements of this chapter, and with all applicable federal and District of Columbia laws and regulations.
- 101.2 Unless specifically exempted, the provisions of this chapter shall apply to a Child Development Facility that is licensed, required to be licensed, or applying for a license under the Facilities Act and this chapter, and their respective staff.
- 101.3 The phrase "Child Development Facility" ("Facility"), as defined in this chapter, includes any person or persons, or entity or organization, whether organized formally or informally, unless specifically exempted:
- (a) That provides care, education, and other services, supervision, and guidance for more than two (2) infants, toddlers, and children that are not related, on a regular basis;
 - (b) Includes the administration, program, and premises of a Child Development Facility, other parts of the building housing the Facility, and adjoining grounds over which the administrator has direct control; and
 - (c) Includes:
 - (1) A Child Development Center ("Center");
 - (2) A Child Development Home;
 - (3) An Expanded Child Development Home ("Expanded Home"); and
 - (4) An Out-of-School-Time (OST) Program.
- 101.4 Except as provided in Subsection 101.5, no person shall either directly or indirectly operate a Facility, for any purpose, until a license has been issued to that person stating that the use complies with the provisions of this chapter and all applicable federal and local laws and regulations.
- 101.5 The following child development services shall be exempt from obtaining a license to operate a Facility:

- (a) Occasional babysitting in a babysitter's home or a child's home for the children of one (1) family;
- (b) Care provided in a child's home by a caregiver paid for by a child's family;
- (c) Care provided for more than one (1) child in a Nanny-Share, as defined in this chapter;
- (d) Informal or occasional parent-supervised play groups;
- (e) Adult gyms or clubs that provide temporary babysitting as a benefit in order for members to utilize services;
- (f) Adult education programs that provide child care services while parent(s) are on the same campus as the child attending a class or education program for a temporary period of time;
- (g) Child-centered businesses that solely provide sessions, classes or activities including, but not limited to, tutoring, music, dance, sport, or art, while parent(s) or guardian(s) remain on the business' premises;
- (h) Care provided in places of worship during religious services;
- (i) Care provided by a related person, as defined in this chapter;
- (j) Facilities operated by the Federal Government on Federal Government property, except that a private entity utilizing space in or on Federal government property is not exempt unless Federal law specifically exempts the Facility from the District of Columbia's regulatory authority;
- (k) A District of Columbia public school or public charter school providing education services to children in grades pre-K-3 through twelfth (12th) grade during a full school day;
- (l) A private school providing education services to children in grades pre-K-through twelfth (12th) grade during the a full school day; and
- (m) A community based organization providing only pre-K education services to pre-K age children pursuant to the Pre-k Act and funded by OSSE;
- (n) Facilities that provide only before school care, only after school care, or only summer camp to school age children; and
- (o) Facilities otherwise exempted by law.

101.6 A Facility that has entered into a Child Care Subsidy Provider Agreement with the District of Columbia shall comply with the terms of such Provider Agreement in addition to the provisions of this chapter.

102 GENERAL LICENSE REQUIREMENTS

102.1 Except as otherwise provided in this chapter, no person shall either directly or indirectly operate a Child Development Facility without first obtaining a license issued by OSSE, or its successor agency.

102.2 A license shall be issued only to a Facility for which an application is made.

102.3 A license shall be for the address of the Facility's actual site.

102.4 OSSE shall issue a license after receipt of a complete application, if OSSE determines that the application establishes, to OSSE's satisfaction, that the Facility will be operated in compliance with the provisions of this chapter and all applicable federal and local laws and regulations.

102.5 If a conflict exists between a general requirement and a specific requirement of this chapter applicable to a particular classification or size of Facility, the specific requirement shall apply.

102.6 OSSE shall issue the following types of licenses:

- (a) **Initial License.** An initial license may be issued by OSSE to an applicant who is not currently licensed;
- (b) **Renewal License.** A renewal license may be issued by OSSE to a current Licensee demonstrating substantial compliance with this chapter that applies for renewal before the expiration of the current license; or
- (c) **Restricted License.** A restricted license may be issued by OSSE as an alternative to suspending or revoking an existing license when a Facility has one or more deficiencies.

102.7 The initial license and each renewal license may be valid for a three (3) year period beginning on the date of issuance.

102.8 Each Facility licensed pursuant to this chapter that accepts public funding shall participate in OSSE's Quality Rating and Improvement System or any successor tiered-quality rating system.

102.9 Each Facility licensed pursuant to this chapter that does not accept public funding may participate in OSSE's Quality Rating and Improvement System, or any successor tiered-quality rating system.

- 102.10 Each license shall state:
- (a) The name of the Licensee;
 - (b) The name of the parent entity (if any) of the Licensee or person(s) with ownership interests in the Facility;
 - (c) The classification of the Facility as Center, Home, or Expanded Home;
 - (d) The address of the Facility;
 - (e) The maximum allowable number of children who may be cared for at the Facility, including the maximum capacity for each age category of children served at the Facility;
 - (f) The limitations, if any, on services authorized; and
 - (g) The expiration date of the license.
- 102.11 A Licensee shall display the original license issued pursuant to these regulations, at all times in a conspicuous place readily visible and accessible to the public at the premise(s) named on the license.
- 102.12 A Licensee shall comply with the provisions stated on its license unless otherwise authorized under this chapter.
- 102.13 A separate license shall be required for each building functioning as a Facility, even if on the same premise(s).
- 102.14 A license shall remain the property of OSSE.
- 102.15 A license is not transferable, assignable, or subject to sale.
- 102.16 A license shall be void, and a Licensee shall surrender the license to OSSE immediately upon the occurrence of any of the following:
- (a) A Licensee closes the Facility permanently;
 - (b) The license is revoked;
 - (c) The license is suspended;
 - (d) The license expires and the application for a renewal license is denied; or
 - (e) The license expires and the Facility has not applied for a renewal license.

103 APPLICATION FOR INITIAL LICENSE

- 103.1 An applicant for an initial license to operate a Facility under this chapter shall initiate the application in the name of the person or persons or legal entity or entities with ownership interests and who are responsible for operation of the Facility.
- 103.2 Prior to submitting an application for an initial license to operate a Facility under this chapter, the applicant shall complete a Child Development Facility licensing orientation facilitated by or on behalf of OSSE. If an applicant submits an application prior to completing the required orientation, OSSE may suspend processing the application until this requirement is met.
- 103.3 An applicant for an initial license to operate a Facility under this chapter shall submit a complete application to OSSE.
- 103.4 OSSE shall consider that an application is complete when the applicable fees, imposed pursuant to Section 108 (Fees) of these regulations, all required documentation listed on the application form issued by OSSE, and all information requested on the application form, are provided.
- 103.5 In addition to the required documentation listed on the application form issued by OSSE, each applicant shall obtain, and provide OSSE with the original version of the following:
- (a) A Certificate of Occupancy, Home Occupation Permit, or other succeeding form of equivalent proof that the premise(s) comply with all applicable Federal and District of Columbia building, fire-safety, construction, and zoning laws, regulations and codes and that the premise(s) are fit and suitable for the operation of a Child Development Facility, issued by the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”);
 - (b) A fire safety inspection certification or other equivalent proof that the premise(s) comply with all applicable Federal and District of Columbia fire safety laws, regulations and codes, issued by the District of Columbia Department of Fire and Emergency Medical Services (“FEMS”) not more than ninety (90) days old;
 - (c) A certification or clearance report issued by a D.C. Department of Energy and Environment (“DOEE”) certified lead-based paint inspector, risk assessor, or dust sampling technician confirming that the Facility does not contain any lead-based paint hazards, issued no more than thirty (30) days prior to the date of application;

- (d) [RESERVED];
- (e) A Clean Hands certification that the applicant satisfies the requirements that must be met in order to obtain a license or permit from the District government, set out in D.C. Official Code § 47-2862, issued by the District of Columbia Office of Tax and Revenue within thirty (30) days of the date the application is submitted;
- (f) Proof of insurance, that includes a reasonable coverage amount, as determined by the District of Columbia Office of Risk Management, for the following types of coverage:
 - (1) Commercial General Liability;
 - (2) Umbrella “Follow Form” Liability;
 - (3) Sexual Abuse & Molestation Liability; and
 - (4) Vehicle liability covering every vehicle that will be used to provide transportation services to children at the Facility; and
- (g) A current, valid, and notarized building use agreement that identifies a contingency location that may be used if the primary location of operation ceases to be available and includes, but is not limited to, the following:
 - (1) Contact information for the owner of the building;
 - (2) The purpose of the use;
 - (3) General guideline and requirements;
 - (4) Proof of appropriate insurance coverage;
 - (5) Proof of valid certificate of occupancy;
 - (6) Proof of updated safety inspections that are required specific for a Child Development Facility;
 - (7) User responsibilities;
 - (8) User restrictions; and
 - (9) Facility usage fee, if any.

103.6

An application for an initial license shall include a signed declaration by the applicant, or by a person authorized to submit the application on the applicant’s

behalf if the applicant is not an individual, that the contents of the application and the information provided with it are true, accurate, and complete.

- 103.7 Upon receipt of a complete application for an initial license, and prior to the issuance of the license, OSSE shall review the application and conduct an on-site inspection to determine whether the Facility is in compliance with the requirements in this chapter.
- 103.8 If, in the course of the on-site inspection for an initial license, OSSE determines that a Facility is out of compliance with any requirement of this chapter, or that the application is deficient in any way, OSSE may issue a Statement of Deficiency(ies).
- 103.9 After receipt of notification from the applicant that every stated deficiency has been corrected, OSSE shall conduct a follow-up application review and inspection or inspections as needed to determine whether the Facility is in compliance with this chapter.
- 103.10 OSSE may deny the application for an initial license if:
- (a) An applicant fails to provide a complete application within ninety (90) days of the initial submission;
 - (b) An applicant demonstrates inability to abate the identified deficiencies under this chapter within the required timeframe specified by OSSE, which shall not to exceed ninety (90) days;
 - (c) An applicant demonstrates inability to comply with this chapter within the required timeframe specified by OSSE, which shall not to exceed one hundred and eighty (180) days;
 - (d) An applicant or, if the applicant is a business entity, any owner, officer, or employee of the applicant, who the applicant plans to assign to work at the Facility is registered, or is required to be registered, on a State child protection registry or repository; or
 - (e) The provisions of this chapter are not met.

104 APPLICATION FOR RENEWAL LICENSE

- 104.1 The application for a renewal license shall be submitted no later than ninety (90) days before the expiration date of the existing license.
- 104.2 The existing license shall remain in effect until OSSE makes a final determination with regard to the application for a renewal license, if a Licensee submits a timely and complete renewal license application, provided that the Licensee complies

with the terms, conditions, and restrictions applicable to the license.

- 104.3 An applicant for a renewal license to operate a Child Development Facility under this chapter shall submit a complete application to OSSE.
- 104.4 OSSE shall consider an application complete when the appropriate fees, pursuant to Section 108 (Fees) and all required documentation listed on the application form issued by OSSE, the documentation required by these regulations, and a fully complete application form is submitted.
- 104.5 In addition to the required documentation listed on the application form issued by OSSE, each applicant shall obtain:
- (a) A fire safety inspection certification or other equivalent proof from FEMS that the premise(s) comply with all applicable Federal and District of Columbia fire safety laws, regulations and codes, issued by FEMS;
 - (b) A Clean Hands certification that the applicant satisfies the requirements that must be met in order to obtain a license or permit from the District government, set out in D.C. Official Code § 47-2862, issued by the District of Columbia Department of Tax and Revenue within thirty (30) days of the date the application is submitted;
 - (c) A Certificate of Immunization Compliance that the applicant reached the immunization compliance target issued by the District of Columbia Department of Health;
 - (d) Proof of insurance, that includes a reasonable coverage amount, as determined by the District of Columbia Office of Risk Management, for the following types of coverage:
 - (1) Commercial General Liability;
 - (2) Umbrella “Follow Form” Liability;
 - (3) Sexual Abuse & Molestation Liability; and
 - (4) Vehicle liability covering every vehicle that will be used to provide transportation services to children at the Facility; and
 - (e) A current, valid, and notarized building use agreement that identifies a contingency location that may be used if the primary location of operation ceases to be available and includes, but is not limited to, the following:
 - (1) Contact information for the owner of the building;

- (2) The purpose of the use;
- (3) General guideline and requirements;
- (4) Proof of appropriate insurance coverage;
- (5) Proof of valid certificate of occupancy;
- (6) Proof of updated health and safety inspections specific to a Facility;
- (7) User responsibilities;
- (8) User restrictions; and
- (9) Facility usage fee, if any.

104.6 An application for a renewal license shall include a signed declaration by the applicant, or by a person authorized to submit the application on the applicant's behalf if the applicant is not an individual, that the contents of the application and the information provided with it are true, accurate, and complete.

104.7 If a Licensee submits an incomplete or late application, the Licensee may pay the appropriate penalty fee to extend the current license until the application for the renewal license is approved or denied by OSSE, but for not longer than one hundred and eighty (180) days. If the application for a renewal license is still incomplete after one hundred and eighty (180) days, the current license will be deemed to have expired and the renewal application shall be deemed denied, effective on the first day after the expiration of this one hundred and eighty day (180) period.

104.8 If the Licensee submits an incomplete or late application, OSSE may, in its discretion, waive the penalty fee if the Licensee demonstrates to OSSE's satisfaction, in writing:

- (a) Evidence of good faith effort to submit a complete application for a renewal license on time; and
- (b) Evidence of delay or hardship for reasons not within the Facility's control.

104.9 Upon receipt of a complete application for a renewal license, and prior to the issuance of the renewal license, OSSE may conduct an on-site inspection to determine whether the Facility is in compliance with this chapter.

104.10 If, in the course of the on-site inspection for a renewal license, or review of an application for license renewal, OSSE determines that an existing Licensee is out

of compliance with any requirement of this chapter, OSSE may issue a Statement of Deficiencies.

104.11 After receipt of notification from the existing Licensee that every stated deficiency has been corrected, OSSE shall conduct a follow-up inspection or inspections and, where appropriate, review of the application or other materials, to determine whether the Facility is in compliance with applicable laws and the regulations of this chapter. Nothing in this procedure shall extend the deadline by which a license be renewed in order to avoid being deemed denied.

104.12 OSSE may deny the application for a renewal license if:

- (a) An applicant fails to abate the identified deficiencies within the required timeframe specified by OSSE;
- (b) An applicant fails to comply with this chapter within the required timeframe specified by OSSE; or
- (c) The provisions of this chapter are not met.

104.13 If a renewal license is denied, the Licensee shall not care for any children and shall cease all operations upon the expiration of the current license.

105 APPLICATION FOR AN AMENDED LICENSE

105.1 A Licensee may submit an application to amend an issued license.

105.2 An application for an amended license shall be in the form approved by OSSE and include:

- (a) Justification for the amendment;
- (b) Description of the impact of the amendment on the services offered;
- (c) Applicable licensure fee required in Section 108 (Fees); and
- (d) Any other information OSSE may reasonably require.

105.3 An application for an amended license shall be subject to the same review and requirements as an application for an initial or renewal license, including an on-site inspection if OSSE determines it would be necessary or useful.

106 WAIVER

106.1 OSSE, may waive compliance with one or more provisions in this chapter, if OSSE determines, upon clear and convincing evidence the following:

- (a) The demonstrated immediate economic impact or hardship on the Facility or staff member is sufficiently great to make immediate compliance impractical despite diligent efforts;
- (b) The Facility or staff member is meeting or exceeding the intent of the regulation for which the waiver is requested; and
- (c) The health and welfare of staff and children are not jeopardized as alternative means have been put in place that ensure the health, safety, and welfare of children and staff.

106.2 A Child Development Facility licensed (“Licensee”), required to be licensed, or applying for a license may apply for a waiver by submitting a written request to OSSE that shall include the following:

- (a) Name, address of the Facility, and its assigned license number;
- (b) Citation of the rule for which a waiver is being sought;
- (c) The waiver sought;
- (d) Proof of immediate economic impact or hardship on the Facility or staff member;
- (e) Proof that the intent of the specific regulation shall be achieved in a manner other than that prescribed by the regulation and that the health, safety, and welfare of children in care will be preserved;
- (f) All other relevant information regarding the alleged hardship; and
- (g) Any other evidence OSSE may reasonably require.

106.3 OSSE shall respond to the request for a waiver, in writing, within thirty (30) days of receipt of the request.

106.4 Any waiver granted shall be posted at the Facility in the vicinity of the posted license and available on request.

106.5 Any waiver is issued at the discretion of OSSE and may be revoked by OSSE at any time, either upon violation of any condition attached to it, or upon the determination of OSSE that continuance of the waiver is no longer in the best interest of children in its care.

106.6 Noncompliance with the terms of the waiver shall void the waiver, require the site to comply with the regulation that had been waived, and may be the basis of

additional enforcement action.

107 RESTRICTED LICENSE

- 107.1 As an alternative to suspending or revoking an existing license when a Child Development Facility (“Facility”) has one (1) or more deficiencies, OSSE may issue a restricted license for no more than one (1) year, based upon the anticipated completion of corrective actions required pursuant to a Statement of Deficiencies.
- 107.2 OSSE may issue a restricted license for no more than thirty (30) days if a Facility needs to relocate to its identified contingency location due to a temporary closure, so long as the Facility has a current and valid building use agreement with the contingency location.
- 107.3 A Facility operating under a restricted license shall not enroll additional children.
- 107.4 A Licensee may only operate within the individualized parameters of the restricted license, as determined by OSSE, based on the Facility specific deficiencies.
- 107.5 A restricted license will not be issued for deficiencies that jeopardize the health, safety, or welfare of children, staff, or the general public.
- 107.6 If all of the noted deficiencies are successfully addressed during the restricted license period, OSSE will reinstate the full license that had been in effect to the Licensee.
- 107.7 Failure to successfully complete the corrective action(s), the basis of which resulted in the restricted license, will result in automatic termination of the restricted license or suspension or revocation of the Facility’s license, or both.

108 FEES

- 108.1 Fees for a license to operate a Child Development Facility (“Facility”) shall vary based on the type of Facility and the capacity of the Facility, as determined by OSSE.
- 108.2 Each applicant for a license to operate a Facility shall pay an application and pre-licensure inspection fee in the amount of seventy-five dollars (\$75.00).
- 108.3 Each applicant for an initial license to operate a Facility for a three (3) year duration shall pay the applicable fee:

Initial License Fees	
	Applicable Fee
Child Development Home or Expanded Home	\$225.00

Child Development Center, 1 - 50 Children	\$600.00
Child Development Center, 51 - 100 Children	\$900.00
Child Development Center, 101 - 175 Children	\$1,200.00
Child Development Center, Over 175 Children	\$1,500.00

108.4 Each applicant for a renewal license to operate a Facility for a three (3) year duration shall pay the applicable fee:

Renewal License Fees	
	Applicable Fee
Child Development Home or Expanded Home	\$225.00
Child Development Center, 1 - 50 Children	\$600.00
Child Development Center, 51 - 100 Children	\$900.00
Child Development Center, 101 - 175 Children	\$1,200.00
Child Development Center, Over 175 Children	\$1,500.00

108.5 A penalty fee may be imposed for a late or incomplete renewal license application, pursuant to this chapter, to extend a Facility’s current license accordingly:

Penalty Fee for Renewal License	
	Applicable Fee
90 day Extension	\$100.00
180 day Extension	\$200.00

108.6 The followings fees are also applicable to a license to operate a Facility:

Other Fees	
	Applicable Fee
Fee to Replace an Issued License	\$100.00
Fee to Amend an Issued License	\$100.00

108.7 OSSE may make reasonable adjustments to license fees, by rulemaking. A new fee schedule shall be published by OSSE at least thirty (30) days before any new fee is implemented.

108.8 The fees described in this section do not include the cost of any inspections to be conducted by an entity or agency other than OSSE, including but not limited to, a fire or lead based paint hazard inspection.

108.9 Fee payment is non-transferrable and non-refundable.

109 CHANGES REQUIRING A NEW LICENSE

109.1 A Child Development Facility licensed by OSSE shall submit an application for

an initial license if:

- (a) A change in ownership, as defined in this chapter, is proposed. When a change in ownership of a Facility will occur, a Licensee shall apply for a new initial license at least ninety (90) days before new ownership takes effect; and
- (b) A change in location is proposed. When a Facility permanently changes location, it is considered a new operation. A Licensee shall apply for a new initial license and a new license shall be obtained, prior to opening at the new location. A temporary closure, pursuant to Subsection 107.2, is not considered a change in location.

110 NOTICE REQUIREMENTS FOR CHANGES IN OPERATION

110.1 Licensee shall notify OSSE in writing no less than thirty (30) calendar days before the implementation of any of the following planned changes in operation:

- (a) Renovation or alteration of the premises that exceeds the scope of minor modification pursuant to Title 11 DCMR, and that requires the Facility to submit an application for modification to DCRA. Upon receiving a new Certificate of Occupancy but prior to serving any additional children, a Licensee shall apply for an amended license;
- (b) Change in telephone number of the Facility or a disruption of telephone service at the Facility;
- (c) A significant change in circumstances, including but not limited to:
 - (1) Operation of the program;
 - (2) Hours of operation;
 - (3) Services provided;
 - (4) Increase in capacity;
 - (5) Program space usage; or
 - (6) Closure of the Facility.
- (d) In the case of a Child Development Home or Expanded Home, a change in the Caregiver's first or last name;
- (e) In the case of a Child Development Home or Expanded Home, any new additional person(s) who intend to reside in the household and who were

not listed on the application for licensure, including the new member's criminal history; or

- (f) In the case of a Child Development Center, a change in the Center Director, including the new Center Director's credentials.

110.2 If a Facility undergoes any of the listed changes in operation without the change being planned in advance, the Licensee shall notify OSSE, in writing, within twenty-four (24) hours of the change occurring.

110.3 Upon notification of the change(s), OSSE may inspect the Facility to evaluate the impact of the change(s) on the provision of child development services.

110.4 Based upon the nature of the change(s) in operation, OSSE may require that an initial or renewal application, along with the appropriate fees, be submitted.

110.5 Upon notification of the change(s), OSSE may issue an amended license, consistent with the approved change(s) and subject to the provisions of this chapter.

111 MONITORING AND INSPECTIONS

111.1 OSSE, and any other duly authorized official of OSSE or another agency of the District of Columbia having jurisdiction over or responsibilities for a Child Development Facility ("Facility"), after presenting official credentials or identification or authority issued by the District of Columbia, shall have the right, either with or without prior notice, to enter upon and into the premises of any Facility licensed, required to be licensed or that has applied for licensure, to facilitate verification of information submitted by a Facility and to determine compliance with the Facilities Act or other applicable Federal and District of Columbia laws and regulations.

111.2 An authorized entrant shall conduct an inspection in a manner that minimizes disruption to a Facility.

111.3 The right of entry and inspection shall also extend to any premise that OSSE reasonably believes is being operated or maintained as a Facility without a valid license provided that entry or inspection shall be made with the permission of the individual in charge of the premises or with a warrant obtained from the D.C. Superior Court, pursuant to D.C. Official Code § 11-941, or an appropriate court of competent jurisdiction, authorizing the entry or inspection for the purpose of determining compliance with this chapter.

111.4 OSSE is authorized to issue a subpoena to inspect and investigate a Facility in order to determine compliance with the provisions of this chapter, that may be enforced in accordance with the terms of D.C. Official Code § 7-2036(b).

- 111.5 OSSE, and other authorized District of Columbia officials, shall have access to all records of the Facility, including but not limited to:
- (a) Child, staff, and administrative records;
 - (b) Financial, tax, and inspection records;
 - (c) Surveillance footage from a Facility's recording devices;
 - (d) Policies and procedures; and
 - (e) Any other information or documentation necessary to determine the Facility's compliance with applicable Federal and District of Columbia laws and regulations.
- 111.6 Each Licensee shall receive, at minimum, one (1) annual announced and one (1) annual unannounced inspection to:
- (a) Facilitate verification of information submitted by the Licensee;
 - (b) Determine compliance with the Facilities Act, or other applicable Federal and District of Columbia laws and regulations; and
 - (c) Verify compliance with waiver terms, if applicable.
- 111.7 Annual required documents shall be updated and available for review during annual inspections.
- 111.8 Upon its own initiative, or upon receipt of information alleging violation(s) of any law or regulation under its jurisdiction, OSSE may conduct announced or unannounced on-site investigations or desk audits.
- 111.9 OSSE shall maintain and make available to the public by electronic means, a list of all of the Facilities licensed that includes the following information for each licensed Facility:
- (a) Dates of monitoring and inspection;
 - (b) Results of monitoring and inspection reports;
 - (c) Any corrective action taken;
 - (d) Substantiated complaints about failure to comply with the provisions of this chapter or such amendment, and all applicable federal and local laws and regulations; and

- (e) The number of deaths, serious injuries, and instances of substantiated child abuse that occurred in each Facility.

112 ENFORCEMENT ACTIONS

112.1 A Child Development Facility licensed, required to be licensed, or applying for a license may be subject to any of the following enforcement actions by OSSE, or any other authorized government entity, when that agency or entity has jurisdiction, for violations of Federal or District of Columbia laws or regulations:

- (a) Denial of application for initial license;
- (b) Denial of application for renewal license;
- (c) Issuance of a restricted license;
- (d) Suspension of a license;
- (e) Revocation of a license;
- (f) Cease and desist order;
- (g) Civil fines;
- (h) Summary suspension;
- (i) Criminal prosecution; or
- (j) Injunction.

112.2 Other than where OSSE proposes to issue a Notice of Summary Suspension or a Cease and Desist order, OSSE shall provide written notification of the proposed enforcement action to the Licensee or applicant prior to initiating any of the enforcement actions in Subsection 112.1.

112.3 Advance written notice is not required prior to summary suspension or issuance of a cease and desist order.

112.4 Unless otherwise specified in this chapter, Notice required by this section shall be served by certified mail upon the Licensee or applicant at the current physical address of the Facility as shown in OSSE's records.

112.5 Notice served by certified mail is deemed served on the date stamped upon the return receipt, indicating delivery of the Notice to the applicant or Licensee.

112.6 Unless otherwise specified in this chapter, written notification of a proposed enforcement action shall include the following:

- (a) The intent and nature of the proposed enforcement action, specifying the basis for the intended action;
- (b) Notice of the effective date of the proposed action;
- (c) Notice of the description of, and citation for, each violation alleged;
- (d) In the case of a license suspension, notice of the time period of the proposed suspension;
- (e) Signature of authorized OSSE official;
- (f) Notice that an applicant or Licensee may request a hearing on the proposed enforcement action by submitting a written request to the Office of Administrative Hearings within ten (10) business days after receipt of the Notice, or, if a different time period is prescribed by law, within the applicable time period (which shall be identified in the Notice);
- (g) Notice that the proposed action shall become final without a hearing on the eleventh (11th) business day after service of written notification of the proposed enforcement action if the applicant or Facility fails to request a hearing within the time and in the manner specified.
- (h) Notice that the Licensee will be required to surrender its current license to OSSE upon final action to convert the license to restricted status, or to suspend, or revoke the license.

113 REVOCATION, DENIAL AND SUSPENSION

113.1 An application for a license to operate a Facility may be denied by OSSE or a license to operate a Facility issued pursuant to this chapter may be denied for renewal, suspended for a period determined by OSSE, or revoked by OSSE if the applicant or Licensee, or an employee or volunteer of either, has:

- (a) Failed to comply with any provision of the Facilities Act or this chapter;
- (b) Failed to comply with any federal or District of Columbia laws or regulations applicable to Facilities;
- (c) Fraudulently or deceptively obtained or attempted to obtain an initial license or renewal license or committed any other action described in D.C. Official Code § 7-2040(3);

- (d) Provided false or misleading information on any form or report required by OSSE;
- (e) Failed to allow authorized officials entry to conduct an inspection or investigation, or to otherwise determine whether the applicant or Licensee is in compliance with this chapter or any relevant federal or District of Columbia laws or regulations;
- (f) Employed any method of discipline prohibited by this chapter;
- (g) Been determined by a duly authorized District of Columbia government official to pose a danger to children or youth, pursuant to CYSHA;
- (h) Pled guilty or *nolo contendere* with respect to, or received probation before judgment with respect to, or been convicted of, one of the following crimes as defined in the District of Columbia Official Code or a comparable crime in another state or federal law:
 - (1) Murder;
 - (2) Child abuse;
 - (3) Rape or sexual abuse;
 - (4) A sexual offense involving a minor or non-consenting adult;
 - (5) Child pornography;
 - (6) Kidnapping or abduction of a child;
 - (7) Subject to Section 133.9, illegal possession, use, sale, or distribution of controlled substances;
 - (8) Illegal possession or use of weapons;
 - (9) A felony involving behavior or acts that gravely violate moral sentiments or accepted moral standards of this community and are of a morally culpable quality;
 - (10) A crime of violence as defined in District of Columbia Official Code § 23-1331(4);
- (i) Failed to report suspected child abuse or neglect, as required by District of Columbia Official Code § 4-1321.02;
- (j) Been denied a license to operate a Facility or had a license to operate a

Facility denied, suspended, or revoked in another jurisdiction within the previous three (3) years for a cause which would be grounds for denial, suspension, or revocation under this section;

- (k) If the Facility at issue is a Child Development Home, a determination that any person living in the home that operates as a licensed Facility has pled guilty or *nolo contendere* with respect to, or received probation before judgment with respect to, or been convicted of, any of the offenses identified in Subsection 113.1(h);
- (l) A determination that an applicant or Licensee, or any employee or volunteer who is reasonably expected to come into contact with one (1) or more children, has admitted to or has been found to have abused or neglected a child in the District of Columbia or in any other jurisdiction;
- (m) Any bankruptcy of the Facility or the parent entity of the Facility; or
- (n) Voluntarily closure by a Facility while enforcement action is pending without OSSE approval.

113.2 A Licensee may not reapply for a license for a period of three (3) years if the license to operate a Child Development Facility is revoked.

113.3 If the license of a Facility is suspended or revoked for a building structural issue or construction, the owner, Center Director or Caregiver may reapply for a license after all building structural issues are abated or construction is completed, provided that the application shall include such evidence as is reasonably required by OSSE to determine that all building structural or construction issues have been resolved.

114 SUMMARY SUSPENSION

114.1 OSSE may issue a Notice of Summary Suspension to summarily and immediately suspend the license of a Facility, for a period of not more than forty-five (45) calendar days, unless otherwise provided for in this section, upon finding that circumstances present an imminent danger to the health, safety, or welfare of children, adults, or the general public.

114.2 OSSE may stop placement of children eligible for subsidized care in the Facility once a Notice of Summary Suspension has been issued.

114.3 An imminent threat to the health, safety, or welfare of children , adults, or the general public may include, but is not limited to, an imminent threat of:

- (a) Poor air quality;

- (b) Evidence of rodents and insects in the Facility;
- (c) Inadequate staffing;
- (d) Issues pertaining to improper sanitation and hygiene;
- (e) Substantiated claims of child abuse;
- (f) Unsafe handling and preparation of food; or
- (g) Any other situation that constitutes a violation of this chapter or the Facilities Act that poses an imminent danger to the health, safety, or welfare of children, adults, or the general public.

114.4 A summary suspension of a license shall be effective upon the delivery to the Facility of a written Notice of Summary Suspension, unless otherwise specified by OSSE in the Notice.

114.5 The Notice of Summary Suspension shall:

- (a) Be hand-delivered to the Licensee, at the current physical address of the Facility as shown in OSSE's records; and
- (b) Provide that the Licensee may, within five (5) days after receipt of the Notice, request a hearing. If no request for a hearing is made, the Notice shall become the final administrative decision of the agency.

114.6 Once a Notice of Summary Suspension has been delivered to a Facility, the Licensee shall immediately:

- (a) Surrender the Facility's current license to OSSE;
- (b) Cease the provision of all child development services;
- (c) Provide parents and guardians with written notification of the Notice of Summary Suspension. Written notification of the Notice of Summary Suspension shall state the reason provided by OSSE for the Notice of Summary Suspension, and inform parents and guardians of the need to make alternative child care arrangements; and
- (d) Provide OSSE with a copy of the written notification provided to parents and guardians.

114.7 Except as provided in Subsections 114.10 through 114.12, during the summary suspension period, OSSE shall either reinstate the current license or initiate proceedings for the revocation of the license.

- 114.8 A license that has been summarily suspended may be reinstated before the end of the suspension period if OSSE determines that the Facility has:
- (a) Provided parents and guardians with proper and complete information regarding the Notice of Summary Suspension;
 - (b) Completely abated the perceived or actual threat to the health, safety, or welfare of children, adults, or the general public or established that there was, in fact, no such threat; and
 - (c) Demonstrated substantial compliance with the Facilities Act and with this chapter.
- 114.9 Requests for review of an OSSE's Notice of Summary Suspension shall be filed with the Office of Administrative Hearings not later than five (5) days after the date the written notification of the Notice of Summary Suspension is issued. If a request for review is not received within a timely manner, the summary suspension shall become the final administrative decision of the agency.
- 114.10 Upon a timely request for an expedited hearing pursuant to this section, the Office of Administrative Hearings (OAH) shall conduct the hearing within five (5) business days after the request, and the Office of Administrative Hearings shall issue a decision within five (5) business days after the hearing record is closed.
- 114.11 The Administrative Law Judge's final decision shall be in writing and is the final administrative decision.
- 114.12 If OAH upholds the basis for summary suspension, and the deficiency is not reinstated pursuant to Subsection 114.8, the Facility may, before the end of the initial suspension period, ask OSSE to extend the suspension period for an additional forty-five (45) days.
- 114.13 The burden to demonstrate good cause for extending a summary suspension shall be that of the Facility, and shall include written evidence from the Facility showing significant progress has been made toward achieving compliance with the law(s) or regulation(s) cited, a plan for achieving such compliance within the additional time sought and information establishing why it is substantially likely that the Facility will, in fact, achieve such compliance, and that only through the provision of such additional time will the Facility be able to demonstrate such compliance.
- 114.14 If OSSE determines, in its sole discretion, that there is a substantial likelihood that if the Facility is granted an additional forty-five (45) days in which to correct all violations cited in the Notice of Suspension, and will be able to operate in accordance with this chapter and the Facilities Act, OSSE may, in its sole discretion, extend the summary suspension for up to an additional forty-five (45)

days. Under no circumstance shall a summary suspension period last more than a total of ninety (90) calendar days.

115 CEASE AND DESIST

- 115.1 If OSSE reasonably believes that a Licensee, parent entity, or any person has violated the Facilities Act or any provision of this chapter, and that the violation presents an imminent threat to the health, safety, or welfare of children, adults, or the general public, OSSE may issue a written cease and desist order directing the Facility, parent entity, or person to cease and desist from the violating action(s).
- 115.2 The cease and desist order shall be effective upon the delivery of the cease and desist order. The cease and desist order shall be hand-delivered to the Licensee, or to an adult employee or family member of the Licensee, at the current physical address of the Facility as shown in OSSE's records.
- 115.3 The cease and desist order shall:
- (a) Be hand-delivered to the Licensee or to an adult employee or family member of the Licensee, at the current physical address of the Facility as shown in OSSE's records; and
 - (b) Provide that the Licensee may request an expedited hearing within five (5) days after receipt of the Cease and Desist Order. If no request for a hearing is made, the Order shall be final.
- 115.4 Once a Facility has received a cease and desist order, the Licensee shall immediately:
- (a) Surrender the Facility's current license to OSSE;
 - (b) Cease the provision of all child development services;
 - (c) Provide parents and guardians with written notification of the Cease and Desist Order. Written notification of the Cease and Desist Order shall state the reason provided by OSSE for the Cease and Desist Order, and inform parents and guardians of the need to make alternative child care arrangements; and
 - (d) Provide OSSE with a copy of the written notification provided to parents and guardians.
- 115.5 Upon a timely request for an expedited hearing pursuant to this section, the OAH shall conduct the hearing within five (5) business days after the request, and the Office of Administrative Hearings shall issue a decision within five (5) days after the hearing record is closed.

116 CIVIL FINES, CRIMINAL PROSECUTION AND INJUNCTIONS

- 116.1 Civil fines and penalties may be imposed for any violation of the Facilities Act or of this chapter, pursuant to the District of Columbia Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*). Adjudication of all charged infractions shall be conducted pursuant to Titles I through III of the Civil Infractions Act, except that where a requirement under this chapter conflicts with a requirement under the Civil Infractions, the provision in this chapter shall apply.
- 116.2 Any violation of the Act may result in criminal prosecution, whereupon the violator shall, upon conviction, be subject to imprisonment not to exceed six (6) months, or a fine not to exceed three hundred dollars (\$300.00), or both. Each unlawful act shall constitute a separate violation of this chapter.
- 116.3 Any person who has been previously convicted of an offense in violation of the Act shall, upon a subsequent conviction for the same offense, be subject to imprisonment not to exceed one (1) year, a fine not to exceed five thousand dollars (\$5,000.00), or both.
- 116.4 Prosecutions shall be brought by the Attorney General for the District of Columbia or the United States Attorney for the District of Columbia in the Superior Court of the District of Columbia.
- 116.5 In any prosecution conducted for violation of the Act, a Child Development Facility claiming an exemption from a licensing requirement shall have the burden of proving entitlement to the exemption.
- 116.6 The Attorney General may bring a civil action in the Superior Court of the District of Columbia to enjoin any violation of the Facilities Act or of this chapter.

117 ADMINISTRATIVE HEARINGS

- 117.1 The Office of Administrative Hearings (“OAH”), pursuant to the OAH Act, will hear and decide licensing appeals where it is alleged by a Licensee or an applicant for a license that there is an error in any order, requirement, decision, determination, or refusal made by OSSE in the administration or enforcement of the Facilities Act and this chapter.
- 117.2 Hearings conducted by OAH will comply with this chapter, the OAH Act, the Facilities Act and applicable rules and procedures established by the OAH Rules of Practice and Procedure set out at 1 DCMR Chapters 28 (Office of Administrative Hearings: Rules of Practice and Procedure) and 29 (Office of Administrative Hearings: Rules for DCPS, Rental Housing, Public Benefits, and Unemployment Insurance Cases).

- 117.3 Parties may participate in settlement negotiations prior to a hearing, and may enter into a negotiated settlement agreement in lieu of participating in a hearing.
- 117.4 Each hearing shall be conducted in accordance with the requirements of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code § 2-509), unless otherwise provided in this chapter, the OAH Act, or in the OAH Rules of Practice and Procedure set out at 1 DCMR Chapters 28 and 29.
- 117.5 Any person(s) aggrieved by a final decision of OAH may appeal the decision to the District of Columbia Court of Appeals pursuant to Section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

118 REQUIREMENTS FOR ALL LICENSED CHILD DEVELOPMENT FACILITIES

- 118.1 A licensed Child Development Facility (“Licensee”) shall operate in accordance with the license capacity, age range limitations, hours of operation and other specific service requirements or restrictions designated on its license.
- 118.2 Except as provided in Subsection 118.3, a Licensee shall comply with the requirements set forth in Sections 118 to 161, regardless of the Licensee’s classification as a Center, Child Development Home, Expanded Home, or out-of-school-time program.
- 118.3 If a conflict exists between a general requirement set forth in Sections 118 to 161, and a specific requirement of this chapter applicable to a particular classification or size of Child Development Facility, the specific requirement shall apply.
- 118.4 A Licensee shall exclude any employee with a communicable disease from the workplace, to the same extent and in the same manner as school employees are excluded and readmitted pursuant to 5-E DCMR §§ 1023.1, 1023.5, and 1023.9.
- 118.5 A Licensee shall protect the safety, health, and welfare of all children within their care.

119 CAPACITY

- 119.1 License capacity is the maximum number of children the Licensee is licensed to care for at any given time, as determined by OSSE.
- 119.2 OSSE shall determine limitations on the license capacity based on the following criteria:

- (a) Occupancy capacity established by DCRA or by FEMS;
- (b) Program space requirements, as provided in this chapter;
- (c) Lavatory requirements, as provided in this chapter; and
- (d) Adult-to-child ratios and maximum group size requirements, as established in this chapter.

119.3 Any Facility requesting a change to its license capacity under a current license shall submit an application to amend an issued license to OSSE, with the payment of the appropriate fee, in accordance with Section 108 (Fees).

120 SUPERVISION

120.1 Children shall be supervised while at the Facility by responsible staff and volunteers who can see and hear the children supervised at all times including but not limited to when they are napping or sleeping, on the playground, on field trips, on vehicular and non-vehicular excursions, and during all water activities and water play activities.

120.2 A Licensee shall have a written staffing plan to ensure the required supervision of all enrolled children at all times.

120.3 A Licensee shall have a written staffing policy to ensure proper supervision of all enrolled children at all times, which shall include a mobile device use policy.

120.4 Children shall not be left alone in any room, outdoors, or in vehicles, even momentarily, without staff present.

120.5 A staff member shall be assigned to supervise specific children whose names and whereabouts the staff member shall know and with whom the staff member shall be physically present. Staff shall be able to state how many children are in their care at all times.

120.6 Individuals who do not serve a purpose related to the care of children shall not be present at the Facility for longer than a brief period of time while children are being cared for. Individuals who hinder supervision of children shall not be present at the Facility at any time when children are being cared for.

120.7 Performance of staff duties that are not directly related to the supervision of children, including cooking, housekeeping, or administrative functions shall not interfere with the supervision of children.

121 ADULT-TO-CHILD RATIOS AND GROUP SIZE

- 121.1 Adult-to-child ratios and group sizes are established to ensure the health and safety of all children.
- 121.2 Minimum adult-to-child ratios shall be met at all times, including non-peak hours, during nap or rest periods, and in vehicles during transport.
- 121.3 A licensed Child Development Facility (“Licensee”) shall maintain the adult-to-child ratios and group sizes as specified herein:

(a) For Child Development Centers serving infants, toddlers, and/or preschoolers:

AGE OF CHILDREN	ADULT-TO-CHILD RATIO	MAXIMUM SIZE OF GROUP
0 - 24 months	1:4	8
24 - 30 months	1:4	12
30 months - 48 months	1:8	16
48 months – 60 months	1:10	20

(b) For Child Development Centers providing out-of-school-time care to school age children:

AGE OF CHILDREN	ADULT-TO-CHILD RATIO	MAXIMUM SIZE OF GROUP
Under 6 years	1:12	24
6 years and older	1:15	30

(c) For Child Development Homes and Expanded Homes serving infants, toddlers, and/or preschoolers, and providing out-of-school-time care to school age children:

AGE OF CHILDREN	ADULT-TO-CHILD RATIO	MAXIMUM NUMBER OF CHILDREN ENROLLED
1 child under 2 years of age and 1 to 11 children over 2 years of age	1:6	12
2 children under 2 years of age and 1 to 4 children over 2 years of age	1:6	6
3 children under 2 years of age and 1 to 6 children over 2 years of	1:3 (but at least 2 Caregivers)	9

age		
4 children under 2 years of age and 1 to 8 children over 2 years of age	1:3 (but at least 2 Caregivers)	12
5 children under 2 years of age and 1 to 4 children over 2 years of age	3 Caregivers	9
6 children under 2 years of age and 1 to 3 children over 2 years of age	3 Caregivers	9

- 121.4 A child who is non-ambulatory will be treated the same as a child under two (2) years of age for purposes of the adult-to-child ratio requirements.
- 121.5 [RESERVED].
- 121.6 When children of different ages are combined in one group, the adult-to-child ratio for the youngest child shall apply, except as provided for in Subsections 121.10 and 121.13 to 121.15.
- 121.7 Except as otherwise provided for in this section, volunteers shall not be used to meet adult-to-child ratio requirements. Only employees responsible for directly providing care of, or supervision or guidance to, children shall be counted in the adult-to-child ratios.
- 121.8 Child Development Centers shall have at least two (2) staff members supervising each group at all times. At Child Development Centers serving infants, toddlers, and or preschoolers (or any combination of these), there shall be two Teachers or a Teacher and an Assistant Teacher or aide for each group at all times, except as further specified in this section.
- 121.9 During non-peak hours or during nap or rest periods, adult-to-child ratios shall be maintained, however another adult staff member or adult volunteer may substitute for one (1) of the staff members specified, provided that at least one (1) Teacher or Assistant Teacher supervises the group.
- 121.10 While children with varying ages anywhere from ages thirty (30) months and older are grouped together for napping, one (1) staff person shall be present within sight and sound of the children at all times. A second staff person or volunteer on duty shall also be present on the same floor of the Facility and immediately available to assist in event of an emergency.
- 121.11 In part-day programs that operate no more than four (4) hours per day, the

Licensee may substitute an adult volunteer for an Assistant Teacher or aide.

- 121.12 If the required adult-to-child ratio is met but the situation or circumstance requires additional staff in order to ensure that all children are within the sight and hearing of staff members, then the Licensee shall provide additional staff to ensure adequate supervision of all children.
- 121.13 A licensed Montessori Child Development Facility that is duly accredited by the American Montessori Society (“AMS”) or the Association Montessori International (“AMI”), or other OSSE approved non-traditional programs, may exceed the adult-to-child ratio or group size requirement for centers by no more than fifty percent (50%) of the ratios established by this chapter.
- 121.14 When children of varying ages anywhere from ages two (2) years or older are grouped together in conformance with the implementation of a Montessori curriculum, as measured on January 1 of the current school year, the average age of all of the children in the age group of two (2) through five (5) years shall be used to determine the group maximum size and appropriate adult-to-child ratio.
- 121.15 A Licensee may be granted an exemption to the adult-to-child ratio requirements, if the Facility submits a written request to OSSE in accordance with Section 106 (Waiver) and OSSE, in its sole discretion, concludes that granting the exemption will not jeopardize the health, safety, or welfare of the children being cared for. This request shall also include the following information:
- (a) A detailed description of the program model, including its history and supporting evidence that demonstrates the effectiveness of the model;
 - (b) A detailed explanation as to why an exception to the adult-to-child ratio is integral to the delivery of the program model;
 - (c) An explanation and supporting evidence that the program’s proposed adult-to-child ratio will not jeopardize the health, safety, welfare of children; and
 - (d) Any other information that OSSE may reasonably require.

**122 HEALTH AND SAFETY STANDARDS FOR A FACILITY’S PREMISES:
GENERAL REQUIREMENTS**

- 122.1 A Licensee shall ensure that every building or part thereof that is used as a Facility, is constructed, used, furnished, maintained, and equipped in compliance with all applicable requirements established by District and federal laws and regulations with written certification of compliance from the appropriate regulatory bodies governing zoning, building construction and safety, sanitation, and fire safety.

- 122.2 A Licensee shall, at all times, maintain adequate indoor space for the daily program measured on the inside wall-to-wall dimensions, as follows:
- (a) A minimum of forty-five square feet (45 ft²) of program space per infant;
 - (b) A minimum of thirty-five square feet (35 ft²) of unencumbered program space per toddler and child; or
 - (c) A minimum of forty-five square feet (45 ft²) of encumbered program space per child.
- 122.3 A Licensee shall ensure that exits are:
- (a) Clearly identified;
 - (b) Free of all obstructions; and
 - (c) Arranged or marked so the path to exit the building is visible and clear.
- 122.4 A Licensee shall not operate any other business that may either impact the health and safety of the children and staff or interfere with the overall operation of the Facility on the same premises that is licensed by OSSE as a Facility.
- 122.5 A new or revised Certificate of Occupancy or Home Occupation permit shall be required:
- (a) At the time of any major modification or alteration of any existing premises or structure used by the Facility, but prior to the continued use of the modified or altered portions of the premises or structure for child development purposes;
 - (b) Prior to the use of any portion of the premises or structure that was not previously inspected and approved for use by DCRA as a Child Development Facility;
 - (c) Prior to submitting an application to increase the number of children under thirty (30) months of age to be enrolled at the Child Development Facility; and
 - (d) Prior to submitting an application for a change in licensure capacity of the Child Development Facility.
- 122.6 A Licensee shall undergo a fire safety inspection and shall, annually, obtain certification from FEMS that the premises conform to all applicable fire safety and related codes.

- 122.7 A Licensee shall, at its own expense, undergo an additional fire safety inspection under the following circumstances:
- (a) At the time of any major modification or alteration of any existing premises or structure used by the Facility, but prior to the continued use of the modified or altered portions of the premises or structure for child development purposes;
 - (b) Prior to the use of any portion of the premises or structure that was not previously inspected and certified as conforming to the applicable fire and safety related codes for use as a Child Development Facility;
 - (c) Prior to submitting an application to increase the number of children under thirty (30) months of age to be enrolled at the Child Development Facility; and
 - (d) Prior to submitting an application for a change in licensure capacity of the Child Development Facility.
- 122.8 A Licensee shall ensure that a Facility is free of any lead-based paint hazards.
- 122.9 [RESERVED]
- 122.10 A licensed Facility shall be accessible for children and adults with disabilities, in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Accessibility includes access to buildings, toilets, sinks, drinking fountains, outdoor play areas, meal and snack areas, and all classroom and therapy areas.
- 122.11 All program space that children use shall be heated, cooled, and ventilated to maintain the required temperatures, and air exchange to avoid accumulation of odors and fumes.
- 122.12 A Licensee shall ensure that:
- (a) All access points to stairs are restricted by gates;
 - (b) All doors or windows are protected with guards that prevent exit by a child; and
 - (c) All blinds have child protective coverings ensuring cords are not accessible to children.
- 122.13 A Licensee shall ensure that the Facility is free of moisture, mold, and mildew,

including but not limited to, moisture resulting from water leakage or seepage.

- 122.14 A Licensee shall ensure that waste receptacles have a hands-free opening mechanism, are kept clean, lined with plastic bags, in good repair, and emptied at least daily.
- 122.15 A Licensee shall ventilate program space by mechanical ventilation, such as fans, air conditioning, or at least one (1) operable window. The following criteria shall apply to mechanical ventilation units and windows:
- (a) A freestanding fan shall be placed in a stable location, have a stable base, be equipped with a protective guard, and be inaccessible to children;
 - (b) Windows, including windows in doors, when utilized for ventilation purposes, shall be securely screened to prevent the entry of insects;
 - (c) Windows accessible to children under five (5) years of age that are above ground level of the building shall be adjusted to limit the opening to less than six (6) inches or be protected with guards that do not block natural lighting; and
 - (d) A Facility with glass doors shall place decals at the eye level of the children in its care.
- 122.16 A Licensee shall not use space heaters unless it has received express approval, in writing, from an official of FEMS. If provide written approval, space heaters shall:
- (a) Be attended while in use and be off when unattended;
 - (b) Be inaccessible to children at all times;
 - (c) Have protective covering to keep hands and objects away from the electric heating element;
 - (d) Be placed on the floor only and at least three (3) feet from curtains, papers, furniture, and any flammable object;
 - (e) Be properly vented, as required for proper functioning;
 - (f) Not be used with an extension cord; and
 - (g) Be used in accordance with the manufacturer's instructions.
- 122.17 A Licensee shall ensure that fireplaces and fireplace inserts are inaccessible to children at all times.

- 122.18 A Licensee shall maintain hot and cold running water under pressure. Hot running water shall be maintained at one hundred degrees Fahrenheit (100°F).
- 122.19 A Licensee shall ensure that the Facility's premises remain clear of insects, rodents, and other pests and excrement of insects, rodents, and other pests.
- 122.20 A Licensee shall maintain preventative measures to control insects, rodents, and other pests to comport with best practices and to prevent and eliminate harborage, breeding, and infestation at the Facility's premises. If a harboring, breeding, or infestation of insects, rodents, or other pest occurs on the premises of the Facility, the Licensee shall immediately report the infestation to OSSE as an unusual incident and take immediate steps to have the insects, rodents, or other pests eliminated from the Facility.
- 122.21 A Licensee shall maintain at the Facility a log documenting the use of extermination services, which shall be provided only by a licensed pest control professional. Children shall not be present while pesticides are being applied or within twenty-four (24) hours of application.
- 122.22 A Licensee shall install and maintain working carbon monoxide detectors if there is any gas service in the building. Carbon monoxide detectors shall be tested every six (6) months with a written log of testing records maintained at the Child Development Facility.
- 122.23 A Licensee shall install and maintain an appropriate number of working smoke detectors located in locations consistent with District code requirements and shall ensure they are in working order at all times. Smoke detectors shall be tested quarterly with a written log of testing records maintained at the Child Development Facility.
- 122.24 A Licensee shall perform fire drills, at least monthly, with a written log of the fire drills maintained at the Child Development Facility.
- 122.25 A Licensee shall maintain adequate storage space for play and teaching equipment, supplies, records, and children's possessions and clothing.

**123 HEALTH AND SAFETY STANDARDS FOR A FACILITY'S PREMISES:
LAVATORY SPACE AND EQUIPMENT**

- 123.1 A Licensee caring for preschoolers shall provide at least one (1) flush toilet and one (1) sink for every ten (10) children, based on the license capacity of the Facility.
- 123.2 A Center shall provide bathroom facilities for use by adults separate from those used by children.

- 123.3 A Licensee shall provide a block or step for a child's use for each toilet and sink at a Facility that is too high to be used by one (1) or more enrolled children without assistance.
- 123.4 A Licensee shall provide toilet training chairs or seats (or both), at the discretion of the Facility, for use by any child or children who require them. Training chairs shall be emptied promptly and sanitized after each use. Training chairs shall be made of non-porous, synthetic products. Training chairs shall remain in the bathroom facilities.
- 123.5 A Licensee shall provide toilet paper, soap and single-use paper towels at each bathroom in a manner accessible for independent use by children.
- 123.6 A Licensee caring for infants, toddlers, or preschoolers shall provide at least one (1) changing table for every ten (10) children that are not independently using toilet facilities, based on the license capacity of the Facility.
- 123.7 A Licensee shall ensure that changing tables meet the following requirements:
- (a) Have impervious, nonabsorbent, smooth surfaces that do not trap soil and are easily disinfected;
 - (b) Be sturdy and stable to prevent tipping over;
 - (c) Be at a convenient height for use by Facility staff; and
 - (d) Be equipped with railings or barriers.
- 123.8 A Licensee shall sanitize changing tables after each use.

**124 HEALTH AND SAFETY STANDARDS FOR A FACILITY'S PREMISES:
INDOOR ENVIRONMENT**

- 124.1 A Licensee shall ensure that interior space designated for the use of children is available to children when the center is in operation and is arranged to allow each child adequate space for free movement and active play.
- 124.2 A Licensee shall ensure that the temperature within each room of program space shall be maintained at between sixty-eight degrees Fahrenheit (68°F) and seventy-five degrees Fahrenheit (75°F) from October through March, and between sixty-eight degrees Fahrenheit (68°F) and eighty-two degrees Fahrenheit (82°F) from April through September.
- 124.3 Protrusions such as pipes, wood ends, or long bolts that may catch a child's clothing are prohibited.

- 124.4 Carpeting in the facility shall be nonflammable, nontoxic, and maintained by the Licensee in clean condition and good repair.
- 124.5 A Licensee shall maintain floors that are free from bare concrete, dampness, splinters, and sliding rugs.
- 124.6 A Licensee shall ensure that all floors, walls, and ceilings are in good repair and easy to clean when soiled. Only smooth, nonporous surfaces shall be permitted in areas that are likely to be contaminated by body fluids including, without limitation, lavatories and toilets, and areas used for food preparation or consumption or diaper changing.
- 124.7 A Licensee shall ensure that shoes are removed or covered prior to entering play areas used by infants.
- 124.8 A Licensee shall install finger-pinch protection devices on doors, cupboards, cabinets, and gates that are accessible to children, except on doors, cupboards, cabinets, and gates that are fully closed and locked.
- 124.9 A Licensee shall ensure that strings and cords long enough to encircle a child's neck are not accessible to children.
- 124.10 A Licensee shall ensure that electrical outlets that are not in use and are accessible to children are fitted with appropriate child-proof protective outlet covers that meet the Underwriters Laboratories, Inc. standard for Safety of Receptacle Closures (UL 2255).
- 124.11 A Licensee shall install Ground Fault Circuit Interrupters in areas accessible to children where electrical products may come into contact with water.

**125 HEALTH AND SAFETY STANDARDS FOR A FACILITY'S PREMISES:
OUTDOOR ENVIRONMENT**

- 125.1 A Licensee shall maintain outdoor play space free of standing water, litter, broken glass, wooden splinters, weeds, high grass, and conditions that are, or might be, hazardous to the health, safety, or welfare of children enrolled.
- 125.2 A Licensee shall ensure that each outdoor play area in use by one (1) or more children enrolled at a Facility shall be visible to and within hearing distance of Facility staff at all times.
- 125.3 A Licensee shall ensure that outdoor play space is supervised by adult staff in sufficient quantity and with appropriate placement to ensure that all children are within sight and hearing of at least one staff member at all times.

- 125.4 A Licensee shall ensure that staff, while supervising a group of children in the outdoor play space, are able to summon another adult staff member if the need arises, without leaving the children unsupervised at any time.
- 125.5 A Licensee shall ensure that all outdoor play areas and equipment conform to the standards established by the U.S. Consumer Product Safety Commission and by the American Society for Testing and Materials.
- 125.6 A Licensee utilizing an outdoor play space at the Facility premises shall enclose the outdoor play space with a fence or natural barrier that shall be at least four (4) feet high, with a space no larger than three and one-half (3-1/2) inches between its bottom edge and the ground, and designed to prevent climbing.
- 125.7 A Licensee shall provide at least two (2) exits from each outdoor play space. At least one of these exits shall be remote from the Facility building(s).
- 125.8 A Licensee shall ensure that all outdoor gates have positive self-latching closure mechanisms that are at least four (4) feet off the ground or constructed in a manner so that they cannot be opened by a preschool-age child.
- 125.9 A Licensee shall ensure that the design, construction, and installation of all outdoor play equipment are consistent with the guidelines published by the U.S. Consumer Product Safety Commission's current Public Playground Safety Handbook.
- 125.10 The Center Director, Caregiver, or designated Facility staff shall conduct a daily inspection of each outdoor play space. The daily inspection shall be documented and maintained in a Facility log. All identified problems shall be corrected as soon as possible and children prohibited from using equipment that does not meet safety standards. The inspection shall include, at a minimum, an inspection of the space itself, removal of all trash, debris, broken glass, and other foreign or hazardous materials, and an inspection of each piece of equipment for:
- (a) Visible cracking, bending, warping, rusting, or breaking;
 - (b) Deformation of open hooks, shackles, rings, links, and the like;
 - (c) Worn swing hangers and chains;
 - (d) Missing, damaged, or loose swing seats;
 - (e) Broken supports or anchors;
 - (f) Exposed, cracked, or loose cement support footings;
 - (g) Exposed tubing ends that require plugs or cap covers;

- (h) Accessible sharp edges or points;
- (i) Protruding bolt ends that require caps or covers;
- (j) Loose bolts, nuts, or screws that require tightening;
- (k) Splintered, cracked, or otherwise deteriorating wood;
- (l) Moving parts in need of lubrication;
- (m) Worn bearings or other worn mechanical parts;
- (n) Broken or missing rails, steps, rungs, or seats;
- (o) Worn or scattered surfacing materials;
- (p) Exposed hard surfaces, especially under swings and slides;
- (q) Chipped or peeling paint;
- (r) Pinch or crush points; and
- (s) Exposed mechanisms, junctures, and moving components.

- 125.11 If any hazard listed in this section is noted or observed by the Licensee or OSSE, the Licensee shall immediately correct the hazardous condition or remove the piece of equipment from use until the hazard is corrected.
- 125.12 A Licensee serving infants, toddlers, preschool children, or school-age children shall separate the outdoor play spaces used by infants, toddlers, and preschool children from the play spaces used by school-age children. The separation shall be done in a way that does not to limit the activities of either age group.
- 125.13 A Licensee shall ensure that all surface areas beneath, and in the fall zones of, climbing equipment, slides, swings, and similar equipment are covered in resilient material that diminishes the impact of falls.
- 125.14 A Licensee shall ensure that all outdoor equipment is securely anchored and installed properly to prevent tipping or collapsing.
- 125.15 A Licensee shall ensure that all outdoor play equipment is free of pinch, crush or shear points on all surfaces that are or may be accessible to children.
- 125.16 A Licensee shall provide only swing seats constructed of durable, lightweight, relatively pliable material.

- 125.17 A Licensee shall not allow children to use trampolines.
- 125.18 A Licensee shall maintain all outdoor sandboxes and play areas containing sand in a safe and sanitary condition, including being completely covered when not in use and free of debris.
- 125.19 A Licensee shall ensure that no lawn mowers, hedge clippers, shears or other similar items are used or stored unlocked in any outdoor play space when children are present.
- 125.20 If a Licensee chooses to utilize a rooftop play space, the Licensee shall enclose the rooftop play space with a sturdy fence at least six (6) feet high and designed to prevent climbing.
- 125.21 A Licensee shall provide a fire escape, which leads from the rooftop play space, if applicable, to an open space at the ground level of the Facility premises, and for which the Facility has received written approval from DCRA or FEMS.
- 125.22 Before a Licensee may utilize a rooftop play space, the Licensee shall obtain written approval from the DCRA or FEMS that the additional load presented by the children, staff, and play equipment on the roof is within the load capacity of the building structure.
- 125.23 Before a Licensee may utilize a rooftop play space, the Licensee shall obtain written approval from DCRA that the fence is safe, and shall submit this written approval to OSSE.
- 125.24 A Licensee may not use rooftop play space unless:
- (a) DCRA or FEMS conducts an annual safety inspection of the fence around the play space and provides written approval stating that the fence is safe for its intended purposes;
 - (b) DCRA or FEMS conducts an annual safety inspection of the play space and provides written approval of the use safety of the play space; and
 - (c) A copy of the most current of the written approvals described in paragraphs (a) and (b) next to the Facility's license, in a conspicuous location at the Facility premises

**126 HEALTH AND SAFETY STANDARDS FOR A FACILITY'S PREMISES:
EQUIPMENT, MATERIALS, AND FURNISHINGS**

- 126.1 A Licensee shall provide a variety and sufficient quantities of materials, equipment, and supplies for indoor and outdoor activities, consistent with the

numbers, ages, and needs of the infants, toddlers, preschool, or school-age enrolled children.

- 126.2 Materials, equipment, and supplies accessible to children shall be age appropriate, safe, in good repair, clean, and non-toxic, and shall be accessible to and appropriate for children with special needs, if the Facility provides care to such children.
- 126.3 All playthings, equipment, supplies, furnishings, and other materials provided by a Licensee for use by children shall meet the standards of the Consumer Product Safety Commission and the American Society for Testing and Materials, and shall:
- (a) Be sturdy enough that they will not splinter;
 - (b) Not have sharp points or rough edges;
 - (c) Have lead-free, non-toxic paint or finishes;
 - (d) Be washable, regularly washed, and maintained in good repair; and
 - (e) Comply with Federal standards regarding small toys and objects for use by children.
- 126.4 Notwithstanding any requirement or prohibition in Subsection 126.3, children under three (3) years of age but no younger than thirty (30) months may be enrolled in a Montessori preschool classroom containing materials, equipment, and supplies that are consistent with the full implementation of the Montessori curriculum, as long as children have been evaluated and found to be developmentally ready for the curriculum by the program director, the lead teachers, and the parent(s) or guardian(s).
- 126.5 A Licensee shall prohibit the use of the following at all times:
- (a) Infant walkers;
 - (b) Crib gyms;
 - (c) Collapsible cribs;
 - (d) Playpens; and
 - (e) Projectile toys.
- 126.6 In addition to the requirements contained within this chapter, all playthings, equipment, supplies, furnishings, and other materials provided by a Licensee for

use by children under the age of three (3) years shall:

- (a) Be large enough that they cannot be swallowed; and
- (b) Not have small parts that may loosen and fall off, such as buttons on stuffed animals.

126.7 A Licensee shall ensure that there are sufficient quantities of materials and equipment to keep all children engaged, even if in different activities, at all times, and to:

- (a) Avoid excessive competition among the children and long waits for use of the materials and equipment; and
- (b) Provide for a variety of experiences and appeal to the individual interests of the children

126.8 A Licensee shall ensure that materials provided to children are culturally sensitive, culturally relevant, and designed to promote:

- (a) Social and emotional development;
- (b) Cognitive development;
- (c) Language development and communication skills;
- (d) Independence;
- (e) Creative expression; and
- (f) Fine and gross motor skills.

126.9 A Licensee shall remove and repair, or discard all furniture, equipment, and materials that are not usable because they are broken or hazardous.

126.10 Light bulbs shall be shatter proof or appropriately shielded to prevent product contamination and injuries due to breakage.

126.11 A Licensee may provide helmets for use while riding wheeled equipment so long as the helmets meet the requirements in Subsection 126.22. If a Facility provides helmets for shared use of children while riding wheeled equipment, the Licensee shall wipe down each helmet with wet wash cloth after each use.

126.12 A Licensee shall have available a sufficient number of strollers or carriages with appropriate restraints for infants and non-ambulatory enrolled children.

- 126.13 A Licensee shall ensure that highchairs, if used:
- (a) Have a wide and securely locking base, a crotch bar/guard, and a safety strap that is fastened with every use; and
 - (b) Are used only during meal times and shall not be used to restrain children at any other time.
- 126.14 A Licensee shall provide each enrolled child in a full-day program with an individual crib, cot, or bed, as developmentally appropriate, and ensure that:
- (a) Children do not share bedding, such as sheets and blankets;
 - (b) No child sleeps on a bare, uncovered surface;
 - (c) Cribs, cots, beds, and appropriate beddings, such as sheets or blankets, are kept clean and sanitary at all times;
 - (d) Crib and cot areas are sufficiently separate from play space to prevent access to sleeping areas by children at play; and
 - (e) Each child is allowed to safely and comfortably crawl, toddle, sit, or walk and to play according to his or her stage of development, in a designated play space apart from sleeping quarters, during each day.
- 126.15 A Licensee shall ensure that each crib or cot:
- (a) Meets safety standards established by the U.S. Consumer Product Safety Commission;
 - (b) When in use, is placed at least two (2) feet apart from any other cot, at least two (2) feet from any windows, and two (2) feet from any radiators. The two (2) feet of separation required by this provision shall be measured on all sides of each crib or cot; and
 - (c) Is labeled with the name of the child to whom it is assigned.
- 126.16 A Licensee shall also comply with the following additional requirements for cribs:
- (a) Each crib shall have a firm, fitted mattress of proper size for a crib, covered with a fitted sheet, provided by the Facility;
 - (b) Infant monitors shall not be placed in cribs;
 - (c) Crib gyms, crib toys, mobiles, mirrors, and other toys shall not be placed in, attached to, or hung over an infant's crib;

- (d) Cribs shall only be used for sleep purposes; and
- (e) Cribs shall not be used for time-out or disciplinary purposes.

126.17 A Licensee shall also comply with the following additional requirements for cots:

- (a) Cots shall be used only for children over twelve (12) months of age who can walk;
- (b) Cots shall have coverings that are easy to clean and nonabsorbent; and
- (c) Seasonally appropriate beddings, such as sheets or blankets, sufficient to maintain adequate warmth, shall be available and provided to children as applicable and as needed.

126.18 A Licensee shall ensure that all play equipment is:

- (a) Properly constructed and installed to ensure its safe use by all enrolled children, at an appropriate height for the children who are expected to use the equipment, and in manner that ensures that the equipment will not entrap children;
- (b) Free of pinch, crush, or sharp points on or underneath such equipment that are or may be accessible to children;

126.19 A Licensee shall ensure that any toy is promptly removed from the play area, sanitized with an appropriate germicide, and air dried before it is returned to the play area after the toy is:

- (a) Put in someone's mouth or licked, or otherwise is exposed to saliva; or
- (b) Soiled with blood, stool, urine, or vomit.

126.20 Tricycles and other riding toys provided by a Licensee shall be steerable, appropriate to the ages and sizes of the enrolled children, and shall not contain spokes.

126.21 A Licensee shall maintain tricycles and other riding toys in good condition, free of sharp edges or protrusions that may injure children. When not in use, they shall be stored in a place where they will not present physical obstacles to the children and staff. The Facility staff shall inspect riding toys and wheeled equipment prior to use by a child for loose or missing hardware, parts, protrusions, or other hazards that may lead to injury.

126.22 A Licensee shall ensure that all children one (1) year of age and over wear

helmets that are properly fitted and approved by the U.S. Consumer Product Safety Commission while riding, wheeled equipment such as tricycles, bicycles, scooters, roller skates, rollerblades, or skateboards, regardless of whether the equipment is being ridden indoors or outdoors.

127 PARENT COMMUNICATION

- 127.1 A Licensee shall establish and maintain respectful and professional communication with the parent(s) or guardian(s) of children enrolled.
- 127.2 A Licensee shall provide parent(s) and guardian(s) with access to their child(ren) at all times while at the Facility.
- 127.3 A Licensee shall establish and implement written policies and procedures which shall be kept current and made available to the parent(s) and guardian(s) and used to govern the operations of the Facility.
- 127.4 The policies and procedures shall be consistent with all applicable Federal and local laws and regulations and shall include, but are not limited to, the following:
- (a) A description of services to be provided, specifying the ages of children to be served, days and times of operation, and days and times that the Facility is closed;
 - (b) A description of enrollment and admission requirements s specifying the parent(s)' or guardian(s)' responsibilities for supplying needed information to the Facility and escorting the child to and from the Facility;
 - (c) A fee and payment schedule specifying the standard fees, fees related to absences and vacations and other charges and fees such as transportation and late fees;
 - (d) A description of the Facility's transportation and field trip services;
 - (e) A description of the Facility's procedures for administering medication, both prescription and non-prescription, and notifying parent(s) and guardian(s) of noticeable adverse reactions to medications;
 - (f) A description of the Facility's procedure for notifying parent(s) and guardian(s) when their child is ill or injured, and the Facility's policy regarding the exclusion of sick children;
 - (g) A description of the Facility's procedure for notifying parent(s) and guardian(s) when a child, employee, or volunteer at the Facility has a communicable disease;

- (h) A description of the Facility's procedure for handling medical emergencies;
- (i) A description of meals and snacks served, and guidelines or requirements for food brought by a child to the Facility;
- (j) A statement that parent(s) and guardian(s) have access to all Facility areas used by their child (and a description of any conditions placed on that access);
- (k) Child abuse reporting law requirements;
- (l) The Facility's procedures for identifying and preventing shaken baby syndrome and abusive head trauma in infants, if applicable;
- (m) A description of behavior management practices used at the Facility;
- (n) Nondiscrimination statement;
- (o) If licensed for the care of an infant or toddler, the Facility's:
 - (1) Diapering procedures;
 - (2) Toilet training procedures; and
 - (3) Feeding procedures;
- (p) A description of the safe sleep practices followed by the Center that includes the following information:
 - (1) When setting an infant down to sleep, the infant will be placed on his or her back;
 - (2) No covers or other soft items are allowed in cribs;
 - (3) A description of what constitutes appropriate sleep clothing for infants to be provided by parent or guardian;
 - (4) A statement that individual crib, cot or mat and bedding is provided, and the changing and cleaning practices for these items;
 - (5) A statement that infants who fall asleep in other equipment, on the floor or elsewhere will be moved to a crib to sleep; and
 - (6) A statement that no swaddling or positioning devices will be used at the Facility.

127.5 A Licensee shall maintain written documentation that the Facility has provided the parent(s) with a copy of the Facility's current policies and procedures.

128 REPORTING UNUSUAL INCIDENTS

128.1 A Licensee shall immediately notify OSSE of any unusual incident that may adversely affect the health, safety, or welfare of any enrolled child or children by submitting a completed OSSE Unusual Incident Report form to OSSE's Child Care Complaint email address.

128.2 A Licensee shall also provide a copy of the completed Unusual Incident Report form provided to OSSE to the parent(s) or guardian(s) of each child affected by the unusual incident.

128.3 Unusual incidents may include, but are not limited to, the following:

- (a) Death of a person occurring at the Facility;
- (b) Injury to, or illness of, any child that occurs during the hours the child is enrolled in care and that requires hospitalization or emergency medical treatment;
- (c) Damage to the Facility or to any Facility vehicle or equipment that interferes with the capability of the Facility to protect the health, safety and welfare of the children and adults at the Facility;
- (d) Outbreak of or a single occurrence of a communicable disease at the Facility that is required to be reported to the District of Columbia Department of Health in accordance with Title 22 of the District of Columbia Municipal Regulations;
- (e) Unauthorized departure of an enrolled child or any circumstances under which a child is deemed unaccounted for or missing;
- (f) Any traffic accident involving a vehicle rented, owned, maintained, or the use of which was contracted for by the Facility and in which children are being transported at the time of the accident;
- (g) Any adverse or negative action the Facility takes against an employee, volunteer, or household member related to any substantiated crime against a child; or
- (h) Any other incident at the Facility that involves a response by emergency service personnel, such as police, fire, ambulance, or poison control.

- 128.4 In the case of a traffic accident or an incident involving perceived or actual criminal activity, the Licensee shall also file a report with the appropriate law enforcement authorities.
- 128.5 Any Facility staff member who knows or has reasonable cause to suspect that an enrolled child is, has been, or is in immediate danger of being an abused or neglected child shall, as required by the District of Columbia Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code §§ 4-1321.01 *et seq.*), make or cause to be made an immediate oral report to:
- (a) The Child Protective Services Division of the Child and Family Services Agency (CFSA), via the CFSA twenty-four (24) hour Child Abuse and Neglect Hotline (202-671-SAFE); and
 - (b) The Metropolitan Police Department.
- 128.6 A staff member making an oral report under this section shall also make a written report if:
- (a) A written report is requested by the Child and Family Services Agency or the Metropolitan Police Department;
 - (b) The case is one of abuse involving drug-related activity; or
 - (c) As otherwise required by law.
- 128.7 In the oral and written reports required by this section, the staff member shall include:
- (a) The name, age, sex, and household address of the child who is the subject of the report;
 - (b) A statement that the child who is the subject of the report is enrolled at the Facility;
 - (c) The name, address, and telephone number of the Facility;
 - (d) To the extent known, the name, age, and sex of each sibling or other child living in the same household as the child who is the subject of the report;
 - (e) To the extent known, the name, age, and sex of each parent, guardian, or other caretaker of the child;
 - (f) The information that led the staff member to suspect that the child who is the subject of the report is being, or is at risk of being, abused or

neglected, the nature and extent of the perceived or actual abuse or neglect, and any previous abuse or neglect known to the reporting staff member;

- (g) Any other information that may be helpful in establishing whether the child who is the subject of the report is being, or is at risk of being, abused or neglect, the cause of the suspected abuse or neglect, and the identity of the person(s) responsible for it;
- (h) The name, title, or occupation, and contact information of the staff member making the report;
- (i) Any actions taken by the staff member or the Facility concerning the child in response to the situation; and
- (j) Any other information required by law.

129 RECORDKEEPING REQUIREMENTS: FACILITY OPERATIONS

129.1 A Licensee shall maintain at the Child Development Facility premises at all times and shall, upon request, provide and make immediately available for review by OSSE or any person legally authorized to review the Licensee's documents, the report(s) of each inspection of the Facility by OSSE occurring within the preceding three (3) year period, including any Statement(s) of Deficiencies, subject to the confidentiality limitations contained in this chapter.

129.2 A Licensee shall maintain at the Facility premises at all time and shall provide to OSSE upon request, the current original version of each of the following:

- (a) A Certificate of Occupancy, Home Occupation Permit, or other equivalent proof from DCRA that the premises comply with all applicable Federal and District of Columbia building, fire-safety, construction, and zoning laws, regulations and codes and that the premises are suitable for the operation of a Child Development Facility;
- (b) A fire safety inspection certification or other equivalent proof from FEMS that the premises comply with all applicable Federal and District of Columbia fire safety laws, regulations and codes;
- (c) A certification or clearance report issued by a DOEE-certified lead-based paint inspector, risk assessor, or dust sampling technician no more than thirty (30) days before the date of the Facility's application to be licensed, confirming that the Facility does not contain any lead-based paint hazards;
- (d) [RESERVED];

- (e) A Clean Hands certification that the applicant satisfies the requirements that must be met in order to obtain a license or permit from the District government, set out in D.C. Official Code § 47-2862, issued by the District of Columbia Department of Tax and Revenue within thirty (30) days of the date the application is submitted;
- (f) An immunization certification from the District of Columbia Department of Health;
- (g) Proof of insurance, that includes a reasonable coverage amount, as determined by the District of Columbia Office of Risk Management, for the following types of coverage:
 - (1) Commercial General Liability;
 - (2) Umbrella “Follow Form” Liability;
 - (3) Sexual Abuse & Molestation Liability; and
 - (4) Vehicle liability covering every vehicle that will be used by the Facility to provide transportation services to children at the Facility; and
- (h) A current, valid, and notarized building use agreement that identifies a contingency location that may be used if the primary location of operation ceases to be available and includes, but is not limited to, the following:
 - (1) Contact information for the owner of the building;
 - (2) The purpose of the use;
 - (3) General guideline and requirements;
 - (4) Proof of appropriate insurance coverage;
 - (5) Proof of valid certificate of occupancy;
 - (6) Proof of updated health and safety inspections specific to a Facility;
 - (7) User responsibilities;
 - (8) User restrictions; and
 - (9) Facility usage fee, if any.

- 129.3 Records of investigations, inspections, civil infraction citations, unusual incidents reported in accordance with this chapter, inspection of playground equipment, maintenance of carbon monoxide detectors, and all fire prevention mechanisms and emergency evacuation drills shall be immediately accessible and available for inspection by government officials, shall be provided upon request, and shall be made available to the public for inspection subject to the confidentiality limitations contained in this chapter. A Licensee shall maintain these records for at least three (3) years prior to the current year.
- 129.4 A Licensee shall maintain at the Facility premises, and provide to OSSE upon request, current liability insurance information and documentation for the Facility and, if the Facility provides transportation services, information and documentation of vehicle safety and insurance, including liability insurance.
- 129.5 A Licensee shall maintain records documenting any adverse or negative action the Facility takes against an employee, volunteer, or household member related to any substantiated crimes against a child. The adverse action shall be reported as an unusual incident in accordance with this chapter and related documentation shall be provided to OSSE upon request.
- 129.6 A Licensee shall maintain a maintenance log and retain copies of service and repair records, in a single location at the Facility, for all motor vehicles that are owned or leased or otherwise used for purposes of transporting enrolled children. A Licensee shall maintain each record for at least twelve (12) months after the date of the inspection or repair and provide the record to OSSE upon request.
- 129.7 A Licensee shall provide reports and documents to OSSE upon request and maintain and display, in one central area within the Facility, items (a)-(b) below, and have items (d)-(l) below available for inspection by OSSE:
- (a) Copy of the Facility's license;
 - (b) Certificate of Occupancy or Home Occupancy Permit;
 - (c) Evacuation plan;
 - (d) Fire inspection reports;
 - (e) Plumbing, gas, and electrical inspection reports;
 - (f) Evacuation and shelter-in-place drill records;
 - (g) Any accreditation correspondence, including any adverse action taken against the Facility, and/or quality rating score, if applicable;

- (h) Any documentation that any deficiencies have been abated;
- (i) Results of lead tests;
- (j) If there has been a determination within the previous 12 months that the Facility has mold, a certificate of air quality;
- (k) Playground inspection report, equipment inspection/maintenance records and reports; and
- (l) Reports of the inspection and maintenance of fire extinguishers, smoke detectors, carbon monoxide detectors, or other fire prevention mechanisms regarding their compliance with all applicable federal and local laws and regulations regarding fire safety.

130 RECORDKEEPING REQUIREMENTS: CHILDREN

- 130.1 A Licensee shall maintain a record for each enrolled child, in the form provided by or approved by OSSE, in one central location at the Facility, and shall retain the record for three (3) years following the termination of that child's enrollment. The record shall be maintained in a confidential manner in compliance with Federal and District of Columbia laws and regulations, but should be immediately available to the child's caregivers and/or teachers, the child's parents or guardians, and OSSE upon request.
- 130.2 A Licensee shall maintain and provide to OSSE upon request, the following information for each currently enrolled child:
- (a) Full name;
 - (b) Gender;
 - (c) Date of birth;
 - (d) Date of admission;
 - (e) Home address and telephone number;
 - (f) Full names of parent(s) or guardian(s);
 - (g) Business address(es) and contact information, such as email address(es) and telephone number(s) of parent(s) or guardian(s);
 - (h) Designation of individuals authorized to receive the child at the end of each session;

- (i) Name and telephone number of individual to be contacted in emergencies when the parents or guardians are not available;
- (j) Emergency Medical Treatment Authorization form, as approved by OSSE, for emergency medical care, to be used only when the parent(s) or guardian(s) cannot be reached;
- (k) Language(s) spoken in the home;
- (l) Race and ethnicity;
- (m) Health information and records, as required by this chapter;
- (n) Written authorization(s) for the administration of medication as required pursuant to this chapter, if applicable;
- (o) For children in out-of-school-time care:
 - (1) The name of the school the child attends;
 - (2) The name and number of a contact person from that school; and
 - (3) If the child arrives at and leaves the Facility alone, the days and times at which the child should arrive and leave the Facility and the mode(s) of transportation that the child uses to travel to and from the Facility.
- (p) A record of educational and developmental progress; and
- (q) Admission agreement signed by the parent or guardian at enrollment.

130.3 If a child is no longer enrolled, the Licensee shall include the date and reasons for the child's withdrawal, if available, in the child's record. The child's complete record shall be retained by a Licensee for three (3) years following the termination of the child's enrollment.

130.4 A Licensee shall maintain and provide to OSSE upon request, for each enrolled child, the initial and annual health record documentation and information, including:

- (a) Full name, gender, date of birth, and home address of the child;
- (b) Parent(s) or guardian(s) name(s), an emergency phone number for the parent(s) or guardian(s), the name and number of an emergency contact if the parent(s) or guardian(s) are unavailable;

- (c) Health insurance coverage and primary care provider;
- (d) Dates of most recent physical and oral health examinations;
- (e) Child's height and weight at the time of the most recent physical health examination;
- (f) Each licensed health care practitioner's clinical findings, health concerns, referrals, treatments, and recommendations;
- (g) Child's significant health history, including allergies, health conditions, communicable illnesses, and restrictions;
- (h) Specific immunizations received by month, day, and year;
- (i) Results of tuberculosis exposure risk assessment and Tuberculin Skin Test (TST) if indicated, in accordance with American Association of Pediatrics Guidelines for all children over six (6) months of age;
- (j) Results of lead exposure testing, if applicable;
- (k) Identification of long-term medications and special health care requirements or accommodations;
- (l) Name, address, phone number, and signature of the licensed examining health care practitioner;
- (m) Description of developmental delays, impairment(s), behavioral problems or other disabilities to be considered in the child care setting;
- (n) Specific diet restrictions, if applicable; and
- (o) Special family considerations.

130.5 If a child is to be taken on regularly scheduled outings, a Licensee shall maintain on file a written, signed, and dated statement from each child's parent(s) or guardian(s) authorizing the Facility to take the child on regularly scheduled outings, such as walks or trips to a neighborhood playground, outside the Facility. The authorization shall include the child's name, and shall specify the mode of transportation, the anticipated frequency, and the destination of each regular trip. This authorization shall not include field trips or outings that do not occur on a regular schedule. This written permission shall be considered valid for all regularly scheduled outings, as noted on the statement, until withdrawn by the child's parent(s) or guardian(s).

130.6 If the child is to be taken on a field trip that is not classified as a regularly

scheduled outing, a Licensee shall obtain a written authorization from the child's parent or guardian for the outing, which shall include the information required in Subsection 130.5, in addition to the estimated time of departure and arrival.

- 130.7 A Licensee shall maintain and provide to OSSE upon request, for each enrolled child, a record of any suspensions or expulsions.
- 130.8 A Licensee shall maintain and upon request provide to OSSE current records and information related to enrolled children including:
- (a) A roster of enrolled children by age group;
 - (b) Daily sign-in and sign out attendance records by names of children, including first name, last name, and middle initial of each child;
 - (c) Daily schedule of activities; and
 - (d) Daily menu plan for feeding children, which identifies foods actually served if the facility provides any meals or snacks to children.
- 130.9 A Licensee shall conform to applicable Federal and District of Columbia laws and regulations protecting a child's confidential information, shall keep all confidential records in a secured location with limited access, and shall not disclose information concerning an individual child or the child's parent(s) or guardian(s) to persons other than the Facility staff or government officials acting in the course of their duties, unless the parent(s) or guardian(s) grant written permission for the disclosure, or unless disclosure is necessary in an emergency situation.
- 130.10 A Licensee shall inform the parent(s) or guardian(s) of all enrolled children, in writing, of the Facility's policy regarding disclosure of information.

131 RECORDKEEPING REQUIREMENTS: STAFF

- 131.1 A Licensee shall maintain in the form provided by or approved by OSSE, at the Facility premises, and provide to OSSE upon request, the following information for each employee:
- (a) The full name, gender, date of birth, home address, home phone number, cell phone number, and current photograph;
 - (b) Position title and job description;
 - (c) Documentation and results of criminal and background history checks conducted in accordance with this chapter and with all other applicable Federal and District of Columbia laws and regulations;

- (d) The most recent resume provided by the employee, copies of letters of reference, and copies of required degrees, credentials, or official transcripts demonstrating such attainment;
- (e) Verification that the employee completed an orientation reviewing the Facility's policies and procedures and the employee's duties and responsibilities;
- (f) An ongoing record of professional development and earned continuing education units;
- (g) Evidence of completion or certification of all health and safety training requirements set forth in Section 139 (Staff Member Requirements: Professional Development); and
- (h) Date of appointment to, or withdrawal from, any position at the Facility.

131.2 If an employee withdraws or is terminated by the Licensee, the Licensee shall include the date and reasons for the employee's withdrawal or termination in the employee's record. The Licensee shall retain employee's complete record shall be retained for three (3) years following the departure of the employee.

131.3 [RESERVED]

131.4 A Licensee shall maintain in the form provided by or approved by OSSE, at the Facility premises, and provide to OSSE upon request, the following information for each volunteer whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility:

- (a) The full name, gender, date of birth, home address, home phone number, cell phone number, and current photograph;
- (b) Position title and job description or responsibilities; and
- (c) Documentation and results of criminal and background history checks conducted in accordance with this chapter, and with all other applicable Federal and District of Columbia laws and regulations.

131.5 A Licensee shall maintain in the form provided by or approved by OSSE, and provide to OSSE upon request, a record for each staff member, including paid employees and volunteers whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility, which shall include the following:

- (a) Documentation of a pre-employment physical examination by a licensed health care practitioner, conducted not more than twelve (12) months prior to the start of employment or volunteer work;
- (b) Documentation of an annual physical examination by a licensed health care practitioner ;
- (c) Written and signed documentation from the examining licensed health care practitioner, at the time of his or her examination, that the staff member or volunteer was free from tuberculosis and apparent communicable diseases as defined in 22-B DCMR § 201.
- (d) Written and signed documentation from the examining licensed health care practitioner that the staff member or volunteer, if noted to have an identified medical problem, is capable of fulfilling the essential functions of caring for children in a licensed Child Development Facility;
- (e) Current health insurance information; and
- (f) The names and phone numbers of the staff member's primary licensed health care practitioner and of an emergency contact person.

132 SUITABILITY FOR EMPLOYMENT

- 132.1 A Licensee shall maintain a qualified workforce comprised of individuals who are committed to promoting and ensuring the health, safety, and welfare of the children in their care.
- 132.2 The suitability of a current or prospective staff member of a Licensee shall be assessed through completion of:
- (a) Criminal background check that includes:
 - (1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;
 - (2) A search of the National Crime Information Center's National Sex Offender Registry; and
 - (3) A search of the following registries, repositories, or databases in the State (which, for the purpose of this section, includes the District of Columbia) where the child care staff member resides and each State where such staff member resided during the preceding five years:

- (A) State criminal registry or repository, with the use of fingerprints being required in the State where the staff member resides, and optional in other States;
- (B) State sex offender registry or repository; and
- (C) State-based child abuse and neglect registry and database;

- (b) A drug and alcohol testing program consistent with this chapter and Section 2032(a) of CYSHA (D.C. Law 15-353; D.C. Official Code § 1-620.32(a)); and
- (c) Traffic records check through the District of Columbia Department of Motor Vehicles, if a current or prospective staff member will also be required to drive a motor vehicle to transport children in the course of performing his or her duties.

132.3 Compliance with other District and federal rules specifically applicable to employees of a child development facility.

132.4 An applicant for employment or a volunteer position with any covered child or youth services provider who intentionally provides false or misleading information that is material to the application in the course of applying for the position, or who intentionally provides false or misleading information that is material to his or her continued employment or service, shall be subject to prosecution pursuant to 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).

133 SUITABILITY FOR EMPLOYMENT: CRIMINAL BACKGROUND CHECKS

133.1 Each Licensee shall comply with the requirements set forth in this Sections 133 and 135 related to criminal background checks for any individual:

- (a) Who is employed by a Facility for compensation, including a contract employee or self-employed individual; or
- (b) Whose activities involve the care or supervision of children at a Facility or unsupervised access to children who are cared for or supervised at a Facility.

133.2 For the purposes of this section, any individual residing in a Child Development Home or Expanded Home who is eighteen (18) years of age or older is considered to be a staff member.

- 133.3 A Licensee shall submit a request for criminal background checks of current and prospective staff members to OSSE:
- (a) Prior to the date an individual becomes a staff member of the provider; and
 - (b) Not less than once during each three (3) year period for any currently employed staff member.
- 133.4 OSSE shall make a good faith effort to provide notification of the results of the criminal background reports to the Facility and the current or prospective staff member within forty-five (45) days of the date the Facility submitted the request the criminal background check.
- 133.5 Once a Licensee has submitted a request for a prospective staff member's criminal background check, a prospective staff member may begin to work for the Facility if the prospective staff member is supervised at all times by an individual who, within the three (3) year period before the date of the Facility's request, received a qualifying background check result.
- 133.6 A Licensee is not required to submit a request for criminal background check of a staff member if:
- (a) The staff member received a background check that meets the requirements in Subsection 132.3(a):
 - (1) Within three (3) years of the first day of employment at the current Facility; and
 - (2) While employed by or seeking employment at another Facility (for the purposes of this Subsection, the "first Facility") within the District;
 - (b) OSSE provided the first Facility a qualifying background check result, consistent with this chapter, for the staff member; and
 - (c) The staff member is employed by a Facility within the District, or has been separated from employment from the first Facility for a period of not more than one hundred and eighty (180) consecutive days before the date on which the staff member begins working at the current Facility.
- 133.7 Unless otherwise provided by law, prospective or current staff members shall provide a Facility and OSSE with all information necessary to enable the Facility and OSSE to promptly obtain the results of the criminal background checks including:

- (a) A complete set of qualified, legible fingerprints in a format approved by the Federal Bureau of Investigations;
- (b) Any additional identification that is required, including but not limited to the name, social security number, birth date, and gender of the applicant, employee, or volunteer; and
- (c) A signed affirmation stating whether or not the staff member has been convicted of a crime, has pleaded *nolo contendere*, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in another state or territory:
 - (1) Murder, as described in Section 1111 of Title 18, United States Code;
 - (2) Child abuse or neglect;
 - (3) A crime against children, including child pornography;
 - (4) Spousal or domestic abuse;
 - (5) A crime involving rape or sexual assault;
 - (6) Kidnapping;
 - (7) Arson;
 - (8) Physical assault or battery; or
 - (9) A drug-related offense committed during the preceding five (5) years; or
 - (10) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

133.8 OSSE shall review the results of the criminal background and child protection register checks to determine the suitability of the individual.

133.9 A prospective or current staff member shall be ineligible for employment with a Facility, if such individual:

- (a) Refuses to consent to the criminal background check described in Subsection 132.2(a);
- (b) Knowingly makes a materially false statement in connection with such criminal background check;
- (c) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry;
- (d) Is registered, or is required to be registered, on a State child protection registry or repository; or
- (e) Has been convicted of any of the following felonies:
 - (1) Murder, as described in Section 1111 of Title 18, United States Code;
 - (2) Child abuse or neglect;
 - (3) A crime against children, including child pornography;
 - (4) Spousal abuse;
 - (5) A crime involving rape or sexual assault;
 - (6) Kidnapping;
 - (7) Arson;
 - (8) Physical assault or battery; or
 - (9) Subject to Subsection 133.10, a drug-related offense committed during the preceding five (5) years; or
- (f) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

133.10

A prospective or current staff member may be ineligible for employment with a Facility, if OSSE determines that such individual poses a present danger to children or youth or if an individual's prior conviction for crimes impact the fitness of the individual to provide care for and have responsibility for the safety and welfare of children. In making this determination, the following factors shall be considered:

- (a) The specific duties and responsibilities of the applicant;
- (b) The impact or likelihood of an impact, if any, that the criminal offense for which the person was previously convicted will have on his or her fitness or ability to perform one or more of such duties or responsibilities;
- (c) The length of time that has elapsed since the occurrence of the criminal offense;
- (d) The age of the person at the time of the criminal offense;
- (e) The frequency and seriousness of any criminal offense(s);
- (f) Any information produced by the applicant, or produced on his or her behalf, regarding his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
- (g) Any applicable public policy encouraging employment of ex-offenders provided that:
 - (1) A Licensee shall not employ or permit to serve as a volunteer an applicant who has been convicted of, has pleaded *nolo contendere* to, is on probation before judgment, or placed on a case on the stet docket because of, or has been found not guilty by reason of insanity, for any sexual offenses including but not limited to those involving a minor, child abuse, or child neglect; and
 - (2) If an application for employment or volunteering is denied because there is evidence that the applicant presents a danger to children or youth, the Licensee shall inform the applicant in writing.

134 SUITABILITY FOR EMPLOYMENT: TRAFFIC RECORDS CHECK

134.1 A current or prospective staff member who will also be required to drive a motor vehicle to transport children in the course of performing his or her duties shall provide a Facility with all of the information that will allow the Facility to obtain the results of the traffic record check.

134.2 A Licensee shall submit a request for a traffic records check to OSSE, in the form and manner provided by OSSE.

135 SUITABILITY FOR EMPLOYMENT: RESULTS AND APPEALS

135.1 All records of criminal background checks and child protection register checks shall be confidential and are for the exclusive use of determining suitability for employment or volunteer opportunities under this chapter. This information shall

be maintained by the Facility in a secured location with limited access, and the information shall not be released or otherwise disclosed to any person except when:

- (a) Required as one component of an application for employment or volunteer position with any covered child or youth services provider under this chapter;
- (b) Requested by OSSE, or its designee, during an official inspection or investigation;
- (c) Ordered by a court or administrative adjudicatory body by subpoena or otherwise;
- (d) Authorized by the written consent of the person being investigated; or
- (e) Utilized for a corrective, adverse, or administrative action in a personnel proceeding.

135.2 Any individual who discloses confidential records in violation of Section 208 of CYSHA, D.C. Official Code § 4-1501.08, is subject to criminal penalties including a fine of no more than one thousand dollars (\$1,000), imprisonment for not more than one hundred and eighty (180) days, or both.

135.3 OSSE shall provide the results of the criminal background check to the Facility, in a written statement that indicates whether the current or prospective staff member is eligible or ineligible for employment, without revealing any disqualifying information regarding the individuals.

135.4 OSSE shall provide a written Notice of Ineligibility for Employment with the results of the criminal background check to the current or prospective staff member, if OSSE has determined the current or prospective staff member is ineligible for employment with a Facility due to the background check.

135.5 The Notice of Ineligibility for Employment shall:

- (a) Include information related to each disqualifying crime; and
- (b) Provide that the staff member may request a hearing challenging the accuracy or completeness of the information in the reports within thirty (30) days after receipt of the Notice. If no request for a hearing is made, the Notice of Ineligibility for Employment shall be final.

135.6 A current or prospective staff member may file a request for review of an OSSE's Notice of Ineligibility for Employment with Commission on Human Rights not later than thirty (30) days after the date the written notification of the Notice of

Ineligibility for Employment is issued. If a request for review is not received within a timely manner, and no corrective actions are confirmed to have been taken, the Notice of Ineligibility for Employment shall become the final administrative decision of the agency.

136 SUITABILITY FOR EMPLOYMENT: REQUIRED DRUG AND ALCOHOL TESTING PROGRAM

136.1 A staff member shall only consume prescription medication while providing direct care to children in the Facility according to the directions provided and in the manner prescribed by the licensed health care practitioner. However, a staff member shall not consume prescription medication while providing direct care to children in the Facility, if the prescription medication may impair the staff member's ability to perform his or her duties or impact the health and safety of the children in the staff member's care.

136.2 A Licensee shall conform to the requirements, set forth in this chapter pursuant to Sections 2031 *et seq.* of CYSHA (D.C. Law 15-353; D.C. Official Code §§ 1-620.31 *et seq.*), related to the required drug and alcohol testing program for any staff member:

- (a) Who is employed by a Facility for compensation, including a contract employee or self-employed individual;
- (b) Who has direct contact with children;
- (c) Who is entrusted with the direct care and custody of children; and
- (d) Whose performance of duties in the normal course of employment may affect the health, welfare, or safety of children.

136.3 A Licensee shall establish mandatory drug and alcohol testing policies and procedures that provide the following:

- (a) All testing programs shall conduct tests:
 - (1) Prior to employment;
 - (2) Upon an employee's reasonable suspicion referral;
 - (3) Post-accident, as soon as reasonably possible after the accident; and
 - (4) [RESERVED].
- (b) A Licensee shall notify all staff members who meet the requirements in

Subsection 136.2 at least thirty (30) days in advance of implementing the Program;

- (c) The drug and alcohol testing policy shall inform staff members who meet the requirements in Subsection 136.2 of all of the following:
 - (a) Which staff members will be tested;
 - (b) Circumstances under which an employee will be tested;
 - (c) The methodology to be used for testing; and
 - (d) The consequences of a positive test result.
- (d) [RESERVED].;
- (e) Any employee testing positive shall be considered ineligible to work with children until they have successfully completed a drug and/or alcohol treatment program and the Facility has provided evidence that the employee has completed all requirements related to the program and return to duty testing;
- (f) All testing programs shall test for the following drugs:
 - (1) Marijuana;
 - (2) Cocaine;
 - (3) Opiates – opium and codeine derivatives;
 - (4) Amphetamines and methamphetamines;
 - (5) Phencyclidine – PCP;
 - (6) Synthetic drugs; and
 - (7) Alcohol.
- (g) Although alcohol is a legal substance, the consumption of alcohol is prohibited in the performance of safety-sensitive functions under the following circumstances:
 - (1) Concentration: Performing safety-sensitive functions while having an alcohol concentration of 0.04 or greater, as indicated by an alcohol breath test;

- (2) On-duty Use: The consumption of any beverage, mixture, or preparation (including any medication) containing alcohol. This includes the possession of medicines containing alcohol, prescription drugs, or over-the counter drugs, unless the packaging seal is unbroken or directly prescribed to owner; and
 - (3) Pre-Duty Use: Consuming alcohol within four (4) hours prior to performing safety-sensitive functions.
- (h) Any unauthorized use of controlled-substances by safety-sensitive employees is prohibited;
 - (i) All safety-sensitive employees are required to report any medical use of controlled substances. A controlled substance includes any prescribed drug that will impair or present a risk; and
 - (j) No safety-sensitive employee shall refuse to submit to a required drug or alcohol test. An employee who refuses to submit to a drug or alcohol test shall not be allowed to perform any safety-sensitive functions and shall be subject to immediate termination of employment.
- 136.4 A staff member shall sign an acknowledgement that he or she received the written policy as specified in Subsection 136.3 of this section. A legal guardian's signature is needed if the appointee or employee is less than eighteen (18) years of age.
- 136.5 A Licensee shall contract with a professional testing vendor or vendors to conduct drug and alcohol testing pursuant to this chapter and District of Columbia laws and regulations. The vendor or vendors shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing.
- 136.6 The vendor or vendors selected to conduct the testing shall be certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing.
- 136.7 The vendor(s) selected to conduct the testing shall conduct the alcohol and drug testing at a location designated by the program administrator for such purposes.
- 136.8 In general, testing for drugs shall be conducted by urine sample from the individual being tested.
- 136.9 Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a "breathalyzer."
- 136.10 In the case of drug testing, the vendor(s) shall split each sample and ensure that

the laboratory performs enzyme-multiplied-immunoassay technique (EMIT) test on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor(s) using the gas chromatography/mass spectrometry (GCMS) methodology.

- 136.11 A Licensee shall notify, in writing, any appointee or employee found to have a confirmed positive drug test result. The appointee or employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing methodology.
- 136.12 All drug and alcohol testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral or a post-accident and incident test, the Licensee, or a designee of the Licensee, shall escort the employee to the designated test site for specimen collection as needed.
- 136.13 In the event that an individual requires medical care following an accident or incident, medical care shall not be delayed for the purpose of testing. In such cases, drug and alcohol testing may be conducted by a blood test.
- 136.14 A blood, breath, or urine test conducted in accordance with this section shall be deemed positive if the test yields a result that the appointee's or employee's alcohol content was either .04 grams or more per 210 liters of breath, .04 grams or more per 100 milliliters of blood, or .05 grams or more per 100 milliliters of urine.
- 136.15 A pre-employment, reasonable suspicion or post-accident or incident drug or alcohol test shall be conducted as set forth in Subsections 136.5 to 136.14.
- 136.16 Pre-employment drug and alcohol testing shall be conducted after a conditional offer of employment is made, but before the appointee's effective date of appointment.
- 136.17 A reasonable suspicion referral may be based on direct observation of drug use or possession, physical symptoms of being under the influence of drugs, symptoms suggesting alcohol intoxication, a pattern of erratic behavior, or any other reliable indicators. There may be reasonable suspicion under the following conditions:
- (a) The employee is witnessed using a drug or alcohol while on duty;
 - (b) The employee displays physical symptoms consistent with drug or alcohol usage;
 - (c) The employee engages in erratic or atypical behavior of a type that is consistent with drug or alcohol usage; or

- (d) There are other articulable circumstances which would lead a reasonable person to believe that the employee is under the influence of a drug or alcohol.

136.18 A staff member shall be subject to post-accident or incident testing when they are involved in accidents or incidents under the following conditions:

- (a) The staff member is involved in an on-the-job accident or incident that result in injury or loss of human life;
- (b) The employee is involved in an accident in which one (1) or more motor vehicle(s) (either District government or private) incurs disabling damage, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle;
- (c) Anyone receives bodily injury requiring immediate medical attention away from the scene;
- (d) The staff member, while operating a vehicle or other equipment while performing any function while on duty or assisting in the operation or functions of the Facility where he or she works, receives a citation under District of Columbia or another law for a moving traffic violation arising from the incident;
- (e) There are reasonable grounds to believe the employee has been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .04 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof;
- (f) The actions of the employee cannot reasonably be discounted as a contributing factor, using the best information available at the time of the decision; or
- (g) The employee is involved in an on-the-job accident or incident that seriously damages machinery, equipment, or other property.

136.19 [RESERVED].

136.20 [RESERVED].

136.21 Caregivers and staff members of a licensed Child Development Home or Expanded Home shall participate in a drug and alcohol testing program established and administered by OSSE. Any Caregiver of a Child Development Home or Primary Caregiver of an Expanded Home who tests positive shall be immediately required to terminate the operation of his or her Facility and

surrender his or her license.

136.22 [RESERVED].

137 STAFF MEMBER REQUIREMENTS: GENERAL PROVISIONS

137.1 A Licensee's staff members shall complete a physical examination by a licensed health care practitioner at least annually, and obtain written and signed documentation from the examining practitioner that at the time of the examination, the staff member at the time of the examination, the staff member was free of tuberculosis and other communicable diseases, and is physically capable of caring for children.

137.2 Except where the requirements in Subsection 137.3 are satisfied, each staff member shall be physically capable of caring for children, which includes but not limited to a staff member being able to:

- (a) Lift at least forty pounds (40lbs);
- (b) Perform all activities with children for extended periods of time;
- (c) Be outdoors for regular, prolonged activities.

137.3 If a staff member is unable to conform to the requirements in Subsection 137.2, the Licensee shall ensure that a sufficient number of staff members, who are able to conform to the requirements in Subsection 137.2, are present on the Facility premises in order to ensure adequate care and supervision of enrolled children.

138 STAFF MEMBER REQUIREMENTS: AIDES AND VOLUNTEERS

138.1 Each aide or volunteer at a licensed Facility shall work under the direct supervision of a Caregiver, Associate Caregiver, Teacher, Assistant Teacher, Group Leader, Assistant Group Leader, or Center Director at all times.

138.2 The duties of each aide or volunteer at a licensed Facility shall include the following:

- (a) Assist the Caregiver, Associate Caregiver, Teacher, Assistant Teacher, Group Leader, Assistant Group Leader, or Center Director as directed;
- (b) Provide supervision and appropriate care to the children in his or her assigned class or group, under the direct supervision of a Caregiver, Associate Caregiver, Teacher, Assistant Teacher, Group Leader, Assistant Group Leader, or Center Director; and
- (c) Participate in on-going in-service training and continuing education

requirements, as required.

- 138.3 A Licensee shall ensure that no aide or volunteer has sole responsibility for a group or classroom, or for the Facility, at any time.
- 138.4 Aides and volunteers who meet the standard in Section 133.1 are subject to the criminal background and child protection register checks as required in Section 133. A volunteer may use the same criminal background check for a period of 2 years. Licensee shall maintain, and provide to OSSE upon request, documentation of criminal background and child protection register checks of aides and volunteers.
- 138.5 Aides and volunteers under the age of eighteen (18) who have been charged with, convicted, or adjudicated of a criminal offense, which would prohibit the employment of a person over the age of eighteen (18), shall not serve at a Facility.
- 138.6 A Licensee shall ensure that aides and volunteers under the age of eighteen (18) provide a statement from the Family Court Division of the D.C. Superior Court, or a court of competent jurisdiction, that the aide or volunteer does not have a juvenile record. If the aide or volunteer has a juvenile record, the aide or volunteer may choose to reveal the nature of the offense in order to document that the offense is not an offense which would prohibit the employment of a person over the age of eighteen (18).
- 138.7 No more than two (2) volunteers may serve within a classroom or with a group at one time unless otherwise required in order to satisfy a child's IFSP or IEP, and provided that for the purpose of this subsection, a parent or guardian serving within his or her child's classroom or with his or her group shall not be counted as a volunteer.
- 138.8 A Licensee shall require all volunteers who are not provided unsupervised access to children who are cared for or supervised at a Facility and chaperones sign an attestation that the volunteer or chaperone is not on the Child Protection Register, that the volunteer or chaperone will submit to a criminal background check if requested, and that volunteer or chaperone will not remove children in their charge from the sight and hearing of a Facility staff member at all times.
- 138.9 Aides, volunteers, and chaperones are prohibited from administering any form of discipline, as defined in this chapter.

139 STAFF MEMBER REQUIREMENTS: PROFESSIONAL DEVELOPMENT

- 139.1 Each paid employee of a Licensee serving infants, toddlers, and/or preschoolers whose duties or responsibilities include the care of enrolled children shall participate in ongoing professional development, which shall include:

- (a) Registration with and participation in OSSE's professional development information system;
- (b) Pre-service and orientation training in health and safety standards, as detailed in this section;
- (c) Annual training to maintain and update the employee's knowledge of health and safety standards; and
- (d) Annual professional development that:
 - (1) Incorporates the knowledge and application of the District's early learning and developmental guidelines;
 - (2) Promotes the social, emotional, physical, and cognitive development of children; and
 - (3) Improves the knowledge and skills of directors, teachers, and caregivers in working with children and their families.

139.2 Within thirty (30) calendar days of date of hire, each staff member shall receive pre-service training in the health and safety standards of licensed Child Development Facilities in the District of Columbia that, at a minimum, shall include:

- (a) Child abuse and neglect, prevention, detection and reporting;
- (b) Emergency preparation and response planning for emergencies resulting from a natural disaster or a human-caused event;
- (c) Prevention of sudden infant death syndrome and use of safe sleep practices, as applicable;
- (d) Prevention of shaken baby syndrome and abusive head trauma, as applicable; and
- (e) First aid and CPR.

139.3 Within ninety (90) calendar days of date of hire, each staff member shall receive orientation training in the additional health and safety standards of licensed Child Development Facilities in the District of Columbia that, at a minimum, shall include:

- (a) Developmentally appropriate programming for infants, toddlers, preschool, and/or school-age children, as applicable;

- (b) Prevention and control of infectious diseases, including immunization;
- (c) Administration of medication, consistent with standards for parental or guardian consent;
- (d) Prevention of and response to emergencies due to food and allergic reactions;
- (e) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
- (f) Poison prevention, including the handling and storage of hazardous materials and the appropriate disposal of bio contaminants.

139.4 The following critical health and safety training must be completed before staff members are allowed to care for children unsupervised:

- (a) Prevention of sudden infant death syndrome and use of safe sleep practices, as applicable;
- (b) Prevention of shaken baby syndrome and abusive head trauma, as applicable;
- (c) First aid and CPR;
- (d) Poison prevention, including the handling and storage of hazardous materials and the appropriate disposal of bio contaminants; and
- (e) Prevention and control of infectious diseases, including immunization.

139.5 All staff members responsible for transporting children shall receive additional orientation training in the following areas prior to assuming their transportation duties:

- (a) Transportation regulations, including the modeling of how to properly conduct a vehicle passenger check and demonstration by staff to director on how to conduct a vehicle passenger check;
- (b) Proper use of child safety restraints required by District law;
- (c) Proper loading, unloading, and monitoring of children;
- (d) Location of first aid supplies; and
- (e) Emergency procedures for the vehicle, including actions to be taken in the

event of accidents or breakdowns.

139.6 Each paid employee of a Facility serving infants, toddlers, and/or preschoolers whose duties or responsibilities include the care of enrolled children shall participate in annual professional development, including annual training that maintains and updates the health and safety standards, as follows:

- (a) Child Development Center staff shall participate in at least twenty-one (21) hours of professional development annually;
- (b) Child Development Home Caregivers and staff shall participate in at least twelve (12) hours of professional development annually; and
- (c) Expanded Home Caregivers and staff shall participate in at least fifteen (15) hours of professional development annually.

139.7 Annual training that maintains and updates the health and safety standards shall include:

- (a) Child abuse and neglect, prevention, detection and reporting;
- (b) Emergency preparation and response planning for emergencies resulting from a natural disaster or a human-caused event;
- (c) Prevention of sudden infant death syndrome and use of safe sleep practices;
- (d) Prevention of shaken baby syndrome and abusive head trauma;
- (e) First aid and CPR;
- (f) Prevention and control of infectious diseases, including immunization;
- (g) Administration of medication, consistent with standards for parental or guardian consent;
- (h) Prevention of and response to emergencies due to food and allergic reactions;
- (i) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (j) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants; and

- (k) Identifying, approaching and referring students showing signs of psychological distress to appropriate support services pursuant to Section 115b of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.17).

139.8 Annual professional development, beyond the health and safety standards, may include:

- (a) Developmentally appropriate programming for infants, toddlers, preschool, and/or school-age children, as applicable;
- (b) Developmentally appropriate methods of positive behavior intervention and support;
- (c) Inclusion of children with special needs, including the Americans with Disabilities Act and the Individuals with Disabilities Education Act; and
- (d) Communication and collaboration with parents, guardians, and families;
- (e) Community health and social services resources for children and families;
- (f) Planning developmentally appropriate programs and activities for children and families;
- (g) Enhancing self-regulation and self-esteem in children;
- (h) Montessori curriculum, pedagogy, classroom management and other topics specific to the Montessori program, if applicable;
- (i) Basic or advanced business practices; and
- (j) Any other area as determined by OSSE.

139.9 Each staff member may receive the required pre-service training, orientation training, and professional development in a variety of settings, including but not limited to seminars, in person or online courses, workshops, conferences, or association meetings:

- (a) Conducted by an OSSE approved trainer or training organization through OSSE's Trainer Approval Program, or any similar program established by OSSE; or
- (b) Conducted by institution accredited by the U.S. Department of Education or the Council for Higher Education Accreditation.

- 139.10 Licensee shall maintain, and make available for inspection by OSSE upon request, adequate documentation of each staff member's completion of the required pre-service training, orientation training, and professional development. Acceptable documentation shall include one (1) or more of the following:
- (a) A transcript from an institution accredited by the U.S. Department of Education or the Council for Higher Education Accreditation;
 - (b) Certification of participation from a training source approved by OSSE;
 - (c) Written documentation verifying completion of training in First Aid for children, Cardiopulmonary Resuscitation (CPR) for children, or common childhood illnesses, from acceptable sponsoring entities, including the American Red Cross, the American Heart Association, the National Safety Council, and other similarly recognized organizations; or
 - (d) A signed and dated statement from the trainer, on a form approved by OSSE, verifying the staff member's participation in a training program conducted by a trainer licensed, certified, or otherwise approved by OSSE.
- 139.11 A private, parochial, or independent school is exempt from complying with the requirements of Sections 139.1(c), 139.5, and 139.7, if the school:
- (a) Is an elementary/secondary educational program, as defined in this chapter;
 - (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
 - (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
 - (d) Does not offer subsidized child care.
- 139.12 [RESERVED].
- 140 GENERAL DAILY PROGRAM ACTIVITIES AND CURRICULUM**
- 140.1 [RESERVED].
- 140.2 A Licensee shall establish a written planned program of activities that includes time each day for both indoor and outdoor play, suitable to the ages and stages of development of enrolled children at the Facility. The daily program shall be designed to:
- (a) Motivate and stimulate each child's cognitive, physical, social, emotional,

creative, and language development;

- (b) Contain sufficient continuity and flexibility to meet the needs of each child, as well as the needs of the group;
- (c) Provide a balance of active and quiet learning through play;
- (d) Provide both structured and unstructured times, and both Teacher or Caregiver directed and child-initiated experiences; and
- (e) Provide periods of rest appropriate to the age and developmental need of each child, including specific designated times for rest each day.

140.3 A Licensee shall develop a written activity plan for each group of children that implements the scheduled program of activities.

140.4 A copy of the written activity plan for each age group shall be furnished by the Facility to OSSE upon request.

140.5 A private, parochial, or independent school is exempt from complying with the requirements of this section, if the school:

- (a) Is an elementary/secondary educational program, as defined in this chapter;
- (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
- (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
- (d) Does not offer subsidized child care.

141 POSITIVE BEHAVIOR SUPPORT

141.1 A Licensee shall inform staff, volunteers, parents, and children of the Facility's behavioral expectations for children.

141.2 A Licensee shall use positive methods of child guidance that meet the individual needs of each child and encourage self-control, self-direction, self-esteem and cooperation.

141.3 A Licensee shall apply rules, expectations and limits consistently for all children and in a manner consistent with a child's developmental ability.

141.4 Positive behavior support or discipline shall not include any of the following

methods of discipline and the use of any of them by the Licensee, and the staff members, is prohibited:

- (a) Physical harm, including but not limited to, punching, pinching, shaking, shoving, pushing, spanking, striking, kicking, biting, yanking, strangling, kneeling, poking, or plucking;
- (b) Fear, shaming, intimidation, or humiliation;
- (c) Derogatory remarks or profane language;
- (d) Confinement in a locked room or an enclosed area where a child cannot be seen or supervised by Facility staff;
- (e) Force feeding against a child's will;
- (f) Withholding of food, water, rest, toilet use, outdoor activities, or outdoor play; or
- (g) Physical or chemical restraints.

141.5 Separation from other children or planned program activities when used as behavior management or discipline shall be brief in duration and shall be appropriate to the child's age and developmental level and to the circumstances necessitating the discipline. A separated child shall remain in the same room as a supervising staff member.

141.6 Authority to manage behavior or discipline shall never be delegated to another child.

142 HEALTH, SAFETY AND WELFARE: GENERAL REQUIREMENTS

142.1 A Licensee shall comply with requirements set forth in this chapter, as appropriate to the age of children served by the Facility and the Facility setting.

142.2 A Licensee shall conform, to the extent practicable, to the National Health and Safety Performance Standards to ensure the safety and welfare of children and the cleanliness and sanitary conditions of the Facility.

142.3 A Licensee shall ensure that all tobacco products that may be present at the Facility remain out of the reach of enrolled children at all times.

142.4 A Licensee shall ensure that no person, including staff, residents, and visitors to the Facility, smokes or uses tobacco products at the Facility when enrolled children are present.

- 142.5 When children are in the care of the Facility, either on the premises or off-site, no staff member, resident, or visitor shall be under the influence of, or consume, alcoholic beverages, illegal drugs, or legal drugs that cause impairment.
- 142.6 A Licensee shall ensure that no illegal substances or drugs, including marijuana, are on the Facility's premises.
- 142.7 A Licensee shall ensure that no firearms or other weapons are on the Facility's premises, with the exception of those licensed and appropriately in the possession and control of armed security guards authorized to protect the Facility premises.
- 142.8 A Licensee shall ensure that all appliances, sharp utensils, and other dangerous devices are kept inaccessible to children at all times.

143 HEALTH, SAFETY AND WELFARE: SUPPORTING HEALTHY CHILD DEVELOPMENT

- 143.1 A licensed Child Development Facility ("Licensee") serving children in a full-day program shall ensure that each child, including infants, toddlers, and preschoolers, has a minimum of two (2) hours of active playtime each day, including a minimum of forty-five (45) minutes of outdoor activity, weather permitting. During outdoor play, children shall be dressed appropriately for weather and temperature.
- 143.2 A Licensee shall provide one (1) hour of structured active play and guided physical activity, and one (1) hour of child-initiated unstructured physical activity. A Licensee shall schedule children attending less than a full-day program to participate in a proportionate amount of such physical activities. In inclement weather, a Licensee shall encourage and support active play in a safe indoor play area.
- 143.3 Children shall not be engaged in sedentary activities or activities requiring them to sit passively for more than sixty (60) minutes continuously, except during scheduled rest or nap time.
- 143.4 Restrictive infant equipment such as swings, stationary activity centers, infant seats, and molded seats, if used, shall only be used for a maximum of thirty (30) minutes, twice a day. A Licensee shall ensure that safety straps are used and that infants are supervised when placed in equipment.
- 143.5 A Licensee shall prohibit children less than two (2) years of age from viewing television, videos, or other visual recordings, unless a supervising staff member directly interacts with the children during this viewing time.
- 143.6 A Licensee shall limit viewing of television, videos, or other visual recordings to no more than sixty (60) minutes total per day for children ages two (2) and older.

The only materials that may be viewed shall consist solely of developmentally appropriate educational programming or programs that actively engage child movement. A Licensee shall limit to a proportionate amount of any such viewing for children ages two (2) and older attending less than a full-day program.

- 143.7 Notwithstanding Section 160 (Requirements for a Child Development Facility Operating During Non-Traditional Hours), a Licensee shall ensure that children enrolled are provided periods of rest, not to exceed three (3) hours per day. The duration and scheduling of activities shall be appropriate in order to prevent fatigue and to meet the physical needs of the enrolled children at the Facility, taking into account the ages and developmental levels of the children. Each child in a full-day program shall have specific times designated for rest each day.
- 143.8 A Licensee shall ensure that each child has a supply of clean, dry clothing following outdoor play, if needed, and that staff promptly remove all soiled clothing from a child and replace it with clean, dry clothing.
- 143.9 A Licensee shall monitor each enrolled child's development, share observations with the parent(s) or guardian(s), and provide resource information, as needed, for developmental screenings and early intervention services.

144 HEALTH, SAFETY AND WELFARE: HAND HYGIENE

- 144.1 A Licensee shall establish and implement a written policy regarding hand washing that addresses the following areas:
- (a) Under what circumstances hand washing and hand sanitizing are required for staff, volunteers, and children;
 - (b) Specific hand washing and hand sanitizing procedures; and
 - (c) Ongoing monitoring by the Center Director or Caregiver to ensure that proper hand washing procedures are followed by staff, volunteers, and children.
- 144.2 A Licensee shall post in all food preparation, diapering, toileting areas, and other designated hand washing areas the circumstances when children and staff shall perform hand hygiene.
- 144.3 A Licensee shall ensure that all staff and volunteers wash their hands in, at least, the following circumstances:
- (a) Upon arrival for the day, after breaks or when moving from one group to another;
 - (b) Before and after:

- (1) Preparing food or beverages;
- (2) Eating, drinking or handling food;
- (3) Handling clean utensils or equipment;
- (4) Diapering;
- (5) Assisting or training a child in feeding or toileting; or
- (6) Providing any medication or applying any medical ointment or cream.

(c) After:

- (1) Personal use of the toilet;
- (2) Handling or contact with body secretions, such as blood, urine, stool, mucus, saliva, or drainage from wounds;
- (3) Removing disposable gloves;
- (4) Caring for a sick child;
- (5) Handling animals or cleaning up animal excrement; or
- (6) Cleaning or handling garbage.

144.4 A Licensee shall ensure that all children wash their hands in, at least, the following circumstances:

- (a) Upon arrival for the day, after breaks or when moving from one group to another;
- (b) Before and after eating, drinking, or handling food;
- (c) After:
 - (1) Personal use of the toilet;
 - (2) Outdoor activities; or
 - (3) Handling animals.

144.5 A Licensee shall ensure that designated hand washing areas are equipped with

sinks with running water, soap, single-use paper towels or an air hand dryer, and are restricted from use for washing utensils and bottles.

145 HEALTH, SAFETY AND WELFARE: DIAPERING

- 145.1 A Licensee shall maintain diaper-changing areas within close proximity of a properly maintained source of potable, running hot and cold water and soap, and that is not in or near the Facility's kitchen or eating areas.
- 145.2 A Licensee shall store soiled diapers and training pants in designated and labeled containers separate from all other waste, including soiled clothes and linens. A Licensee shall provide a washable, plastic lined, tightly covered receptacle that can be operated by a hands-free opening mechanism, within arm reach of each diaper changing table, for the disposal of soiled diapers or training pants.
- 145.3 A Licensee shall provide an area for the storage of clean diapers and training pants that is clean and designated exclusively for that exclusive use, with the exception that the clean diaper and training pants storage area and the storage area for enrolled children's clean clothes may be combined.
- 145.4 A Licensee shall only use cloth diapers for a child if the child's parent(s) or guardian(s) provides the Facility with a written statement accompanied by supporting written documentation from a licensed health care practitioner, explaining that cloth diapers are required by a special medical circumstance of that child. This statement shall remain in the child's record at the Facility.
- 145.5 Staff members of a licensed Facility shall ensure that each child's diaper or training pant is checked for wetness and feces at least hourly and whenever the child indicates discomfort or exhibits behavior which suggests a wet or soiled diaper. A Licensee shall ensure that upon learning that diapers and training pants are wet or soiled, that they are changed.
- 145.6 A Licensee shall provide one (1) or more diaper-changing areas that have surfaces made of non-porous material.
- 145.7 A Licensee shall ensure that infants and toddlers are diapered only at designated diaper changing areas.
- 145.8 A Licensee shall ensure that children are never left unattended at a diaper changing area.
- 145.9 A Licensee shall ensure that, for each diaper changing area, the diaper changing surface is cleaned and sanitized with a bleach solution or other appropriate germicide after each diaper change.
- 145.10 A Licensee shall ensure that the bleach solution or other germicide used for

cleaning and sanitizing the diaper changing surface is kept in a secure area, inaccessible to children at all times.

145.11 A Licensee shall store or dispose of soiled diapers, training pants, and clothing and diapering materials as follows:

- (a) Cloth diapers, training pants, or clothing soiled with urine or feces that are to be sent home with a child shall be rinsed at the Facility at a location where food preparation does not occur, or shall be placed directly into a plastic container that is sealed tightly, and shall be stored away from the rest of the child's belongings and out of reach of all children, until sent home with the child at the end of the day;
- (b) Cloth diapers, training pants, or clothing soiled with urine or feces that are to be laundered by the Licensee shall be placed in a non-porous covered container containing an appropriate germicidal solution until laundered;
- (c) Cloth diapers, training pants, or clothing soiled with urine or feces that are to be either laundered by the Facility, or sent home with a child for laundering, may be held at the Facility for laundering no longer than one (1) day;
- (d) A Licensee shall place soiled disposable diapers and training pants in a plastic-lined, covered container that shall be emptied, cleaned, and sanitized with an appropriate germicidal agent at least once daily;
- (e) A Licensee shall use only disposable diapering materials, including wipes and changing pads, except as provided for in this chapter, and a Licensee shall discard each such disposable item after one (1) use in the container designated for the discard of soiled disposable diapers; and
- (f) All staff shall wear disposable gloves when changing diapers and training pants or when assisting children to remove soiled clothing. A new pair of gloves shall be used and discarded for each successive child.

146 HEALTH, SAFETY AND WELFARE: SAFE SLEEPING AND RESTING PRACTICES

146.1 A Licensee that provides care for one (1) or more infants shall comply with the latest recommendations of the American Academy of Pediatrics ("AAP") with regard to safe sleep practices and reducing the risk of Sudden Infant Death Syndrome including any recommendation made by the AAP after the effective date of these regulations. If the AAP's latest recommendations differ from the requirements of this section, the Licensee shall comply with the latest recommendations from the AAP.

- 146.2 A Licensee that provides care for one (1) or more infants shall comply with the following requirements with regard to infant sleep and play position:
- (a) Unless otherwise ordered by a physician or other qualified health care practitioner, each infant shall be placed on his or her back for sleeping;
 - (b) Each infant shall be placed on his or her stomach for some part of the day that he or she is awake and under staff supervision;
 - (c) A positioning device shall not be used to restrict the movement of an infant unless such device is ordered by a physician or other qualified health care practitioner;
 - (d) Soft materials or objects, such as pillows, quilts, comforters, sheepskins, blankets, and stuffed toys, shall not be permitted in an infant's sleep environment;
 - (e) Bumper pads shall not be used in an infant's crib;
 - (f) An infant shall not be put to sleep on a sofa, soft mattress, waterbed, chair, cushion, or other soft surface; and
 - (g) An infant shall be removed from his or her crib for all feedings, and shall not be fed by means of a propped bottle.
- 146.3 If there is a medical reason a child cannot sleep on his/her back, then the Licensee shall obtain a signed statement from the child's health practitioner stating a different sleep position is required. This statement shall remain in the child's record at the Facility.

147 HEALTH, SAFETY AND WELFARE: PREVENTION OF CHILD ABUSE AND NEGLECT

- 147.1 A Licensed Child Development Facility ("Licensee"), including any staff, substitutes, volunteers, individual residing on the premises of the Facility, or any other individual connected with the Facility shall not subject a child to abuse, neglect, mental injury, or injurious treatment.
- 147.2 A Licensee shall:
- (a) Provide training to all staff upon initial hire and annually thereafter regarding the Facility's policies and procedures relating to child abuse, neglect, and risk to a child's health, safety or welfare, including to whom and how to report suspected abuse, neglect, or risk to a child's health, safety, or welfare;

- (b) Require staff to immediately report, and to cooperate with officials investigating, alleged or actual child abuse or neglect, or alleged or actual risk to an enrolled child's health, safety, or welfare;
- (c) If any staff member is identified as responsible for alleged or actual child abuse or neglect, or alleged or actual risk to an enrolled child's health, safety, or welfare, the Licensee shall immediately place that staff member on administrative leave or reassign the staff member to duties involving no contact with children until the investigation conducted by authorized District of Columbia government officials is complete and that investigation establishes that the staff member is not responsible for the alleged child abuse or neglect; and
- (d) Create an encouraging and supportive environment where staff may report incidents involving alleged or actual child abuse, or neglect or alleged or actual risk to an enrolled child's health, safety, or welfare, without threat of retaliation, including termination of employment.

148 HEALTH, SAFETY AND WELFARE: EMERGENCY PREPAREDNESS AND RESPONSE PLANNING

- 148.1 A Licensee shall conduct practice emergency evacuation and disaster drills, in accordance with requirements set forth by FEMS. The drills shall include all groups of children and all staff, and shall be conducted at least twice a year, at varying times during the program day. A Licensee shall document the date, time, and duration of each such evacuation drill, the number of children and staff participating, and the weather conditions.
- 148.2 A Licensee shall maintain a complete log of all documented practice evacuation drills for at least five (5) years.
- 148.3 A Licensee shall develop and implement specific procedures for the safe and prompt evacuation of infants, toddlers, and non-ambulatory children.
- 148.4 A Licensee shall develop and maintain an emergency and disaster plan with established procedures for the following:
- (a) Evacuations and clearly marked evacuation routes;
 - (b) Relocating staff and children to a safe evacuation site during an emergency;
 - (c) Sheltering in place if evacuation is not possible;
 - (d) Lock-down procedures in the event of an emergency

- (e) Notifying parents and guardians about an emergency;
- (f) Notifying parents and guardians when an emergency has ended and the process for reuniting parents and guardians with their children;
- (g) Addressing the needs of children during an emergency;
- (h) Contacting local emergency authorities;
- (i) Listing essential local emergency contacts; and
- (j) Posting the Emergency and Disaster plan in a conspicuous place at the Facility's premises.

148.5 A Licensee shall review and update the emergency and disaster plan annually.

148.6 A Licensee shall provide training to all staff annually on the emergency and disaster plan.

148.7 A Licensee shall inform and update parents and guardians of enrolled children at least annually about the Facility's emergency and disaster plan.

148.8 A Licensee shall provide at least one working, non-pay, stationary telephone accessible to staff at each Facility building.

148.9 A Licensee shall register with AlertDC, or any successor notification system, administered by the Homeland Security and Emergency Management Agency, for immediate notification of emergency alerts and notifications.

148.10 A Licensee shall maintain a three (3) day supply of water, staple food, and supplies for each enrolled child and staff member.

148.11 When non-ambulatory children are enrolled in a Facility at street level, a Licensee shall be equipped with a ratio of one (1) evacuation crib for every four (4) non-ambulatory children to be used during emergency evacuations.

148.12 When non-ambulatory children are enrolled in a Facility that has approval to operate above or below street level, a Licensee shall be equipped with a ratio of one (1) evacuation crib for every two (2) non-ambulatory children to be used during emergency evacuations.

149 HEALTH, SAFETY AND WELFARE: HAZARDOUS MATERIALS AND BIOCONTAMINANTS

149.1 A Licensee shall ensure that all cleaning and sanitizing supplies, toxic substances, paint, poisons, aerosol containers, and other items bearing warning labels are

safely stored and are kept in a secure area, inaccessible to the children at all times.

149.2 A Licensee shall ensure that the telephone number for the local Poison Control Center is posted in a location where it is readily available in an emergency situation.

149.3 A Licensee shall use only non-toxic arts and crafts materials.

150 HEALTH, SAFETY AND WELFARE: FIRST AID AND CPR

150.1 A Licensee shall ensure that all staff members shall possess current and valid certification appropriate to the age of children served by the Facility in first aid and CPR.

150.2 A Licensee shall have at all times at least two (2) staff members at the premises and readily available to administer first aid and CPR for children, unless a caregiver in a child development home is serving no more than six (6) children with only two children being under the age of two.

150.3 A Licensee shall maintain at the Facility premises a quantity of first aid supplies sufficient to meet the Facility's reasonably expected needs, based on the size of the Facility, the ages and developmental abilities of the enrolled children, and the Facility's program of activities. A Licensee shall maintain these supplies in a designated location that is readily available to staff and inaccessible to children.

150.4 For every twenty-five (25) children, a Licensee shall maintain a first aid kit that includes, but is not limited to the following supplies:

- (a) A current edition of the first aid text published by the American Academy of Pediatrics, the American Red Cross, or an equivalent community first aid guide;
- (b) Telephone number(s) of the local Poison Control Center;
- (c) One (1) roll of one-half inch (½ in.) non-allergenic adhesive tape;
- (d) One (1) roll of two-inch (2 in.) gauze roller bandage;
- (e) Ten (10) individually wrapped sterile gauze squares in assorted sizes;
- (f) Twenty-five (25) adhesive compresses, such as Band-Aids, in assorted sizes;
- (g) Three (3) clean cotton towels or sheeting pieces, approximately twenty-four by thirty-six inches (24 in. x 36 in.) each;

- (h) One (1) pair of scissors;
- (i) Safety pins in assorted sizes;
- (j) One (1) working flashlight;
- (k) One (1) non-mercury, non-glass thermometer;
- (l) One (1) measuring tablespoon or dosing spoon;
- (m) One (1) pair of tweezers;
- (n) One-third cup (1/3 c.) of powdered milk for dental first aid (for mixing to make a liquid solution);
- (o) Rubbing alcohol and alcohol swabs;
- (p) Cotton balls;
- (q) One (1) ice pack or gel pack;
- (r) Liquid sanitizer;
- (s) Sanitary soap;
- (t) Disposable, nonabsorbent latex free or non-powdered latex free gloves;
- (u) All items needed for disposal of blood-borne pathogens;
- (v) Eye patch or dressing;
- (w) Pen or pencil and notepad;
- (x) Wipes;
- (y) Whistle; and
- (z) One-way valves for infants (if served), young children, and adults.

150.5

A Licensee shall inspect and take inventory of its first aid supplies at least weekly, and replenish them as needed. Replenishment shall include:

- (a) Removing and replacing sterile supplies if the package has been opened or damaged, or if the expiration date on the package has been reached; and
- (b) Replacing all supplies as they are used, expired, or become damaged.

- 150.6 A Licensee shall maintain one (1) transportable first aid kit, in addition to the complete first aid kit, which shall include:
- (a) A current edition of the first aid text published by the American Academy of Pediatrics, the American Red Cross, or an equivalent community first aid guide;
 - (b) Telephone number(s) of the local Poison Control Center;
 - (c) One (1) roll of one-half inch (½ in.) non-allergenic adhesive tape;
 - (d) One (1) roll of two-inch (2 in.) gauze roller bandage;
 - (e) Ten (10) individually wrapped sterile gauze squares in assorted sizes;
 - (f) Twenty-five (25) adhesive compresses, such as Band-Aids, in assorted sizes;
 - (g) One (1) pair of scissors;
 - (h) Safety pins in assorted sizes;
 - (i) One (1) working flashlight;
 - (j) One (1) pair of tweezers;
 - (k) Rubbing alcohol and alcohol swabs;
 - (l) Cotton balls;
 - (m) One (1) ice pack or gel pack;
 - (n) Liquid sanitizer;
 - (o) Disposable, nonabsorbent latex free or non-powdered latex free gloves;
 - (p) Pen or pencil and notepad;
 - (q) Wipes;
 - (r) Whistle; and
 - (s) One-way valves for infants (if served), young children, and adults.

150.7 A Licensee shall ensure that the transportable first aid kit also include:

- (a) List of children in attendance, organized by the staff member they are assigned to, and each child's emergency contact information;
- (b) Special care plans for children who have them;
- (c) Emergency medications or supplies as specified in the special care plans;
- (d) List of phone numbers for the Poison Center, nearby hospitals or other emergency care clinics, and other community resource agencies; and
- (e) Written transportation policy and contingency plans.

150.8 A Licensee shall ensure that a transportable first aid kit is taken along by Facility staff on each outing, and when children under the care and supervision of the Facility are being transported.

151 HEALTH, SAFETY AND WELFARE: INCLUSION, EXCLUSION, AND DISMISSAL OF CHILDREN AND STAFF DUE TO ILLNESS

151.1 A Licensee shall take the following actions under the following circumstances:

- (a) A child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2, upon arrival, shall not attend the Facility that day;
- (b) If, during the time a child is at the Facility, the Facility staff observes one (1) or more symptoms of an illness identified in Subsection 151.2, the Licensee shall notify the child's parent(s) or guardian(s) immediately. A Licensee shall require that the parent(s) or guardian(s) remove the child from the Facility within two (2) hours after the notification was provided;
- (c) A Licensee shall isolate a child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2. The child shall remain within sight and hearing of a staff member; and
- (d) A Licensee shall ensure that a child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2 does not share any personal hygiene, grooming items, or food.

151.2 A Licensee shall exclude a child from a Facility while exhibiting symptoms of illness including, but not limited to, the following:

- (a) Diarrhea (loose, watery, or bloody stools);
- (b) Vomiting two (2) or more times in a twenty-four (24) hour period;

- (c) Body rash with any fever;
- (d) Sore throat with any fever or swollen glands;
- (e) Abnormal discoloration of the skin;
- (f) Any fever accompanied by a rash, vomiting, diarrhea, earache, irritability, or confusion;
- (g) Any other symptom indicative of a reportable communicable disease, as such is defined in 22-B DCMR Chapter 2, or in any superseding document.

151.3 A Licensee shall observe each child for the presence of the following symptoms of illness, that may indicate a medical problem, which may require exclusion from the Facility, isolation from other children, and consultation with the child's parent(s), guardian(s), or licensed health care practitioner(s):

- (a) Fever;
- (b) Lethargy or inability to walk;
- (c) Respiratory problems, including increased respiratory rate, retractions in the chest, excessive nasal flaring, audible persistent wheezing, persistent coughing, either productive or nonproductive, severe coughing causing redness or blueness in the face, or difficulty in breathing;
- (d) Abdominal and urinary system problems, including intestinal parasites, dark urine, white spots in the stool, increased urgency or frequency of urination, or no urination for an entire day;
- (e) Cardiac problems, including choking, change in color of the skin, chest pain, or persistent sweating;
- (f) Ear problems, including discharge from the ear and/or ear pain;
- (g) Throat and mouth problems, including sores on the lips or in the mouth, white patches in the mouth, throat pain, or a dental problem that needs immediate attention; and
- (h) Injuries, including persistent bleeding, oozing wounds, apparent fracture, complaint of persistent bone pain or stiffness, or difficulty with the movement of any extremity.

151.4 A child who exhibits one (1) or more symptoms of an illness identified in Subsection 151.2, and who has been treated for the symptom(s) by a licensed

health care practitioner, may be readmitted to the Facility only with written permission, and written instructions for continuing care if needed, from a licensed health care practitioner.

151.5 If a child exhibits mild symptoms of illness and/or discomfort, the Center Director, or his/her designee, or the Caregiver, in consultation with the child's parent(s) or guardian(s), shall decide whether the child should be immediately discharged from the Facility or discharged at the end of the day. This decision shall consider the following:

- (a) Whether the illness prevents the child from participating comfortably in activities;
- (b) Whether the illness results in a need for care that is greater than the staff can provide without compromising the health and safety of other children; and
- (c) Whether the illness poses a risk of spread of harmful diseases to others.

151.6 Staff members who exhibit one (1) or more symptoms of an illness identified in Subsection 151.2, and who have been treated for the symptom(s) by a licensed health care practitioner, may return to work with written permission from a licensed health care practitioner.

151.7 Staff members who, after having experienced conditions that affect the ability to perform required duties, have been treated for said condition(s) by a licensed health care practitioner, may return to work with written permission from a licensed health care practitioner.

151.8 Staff members who after serious or prolonged illness, have been treated for said illness by a licensed health care practitioner, may return to work with written permission from that licensed health care practitioner.

152 HEALTH, SAFETY AND WELFARE: REQUIRED HEALTH EXAMINATIONS & IMMUNIZATIONS

152.1 A Licensee shall ensure that each child attending a Facility shall, prior to the child's first day of services and at least annually thereafter, submit to the Facility and to OSSE upon request, appropriate, complete documentation of a comprehensive physical health examination, which shall include evidence of age-appropriate health examinations or screenings and up-to-date immunizations, and, for each child three (3) years of age or older, evidence of an oral health examination. Each examination shall have been performed by a licensed health care practitioner within one (1) year prior to the date of submission of the complete documentation.

- 152.2 A Licensee shall provide a sixty (60) day grace period from the first day of service to submit documentation required in Subsection 152.1 for a child experiencing homelessness or a child who is a ward of the District in foster care.
- 152.3 Pursuant to D.C. Official Code §§ 38-501 *et seq.* and 22-B DCMR §§ 130.1 *et seq.*, each child shall be immunized according to the requirements set forth in 22-B DCMR §§ 131-137 before entering the Facility, unless the child is part of a group exempted from this requirement in Subsection 152.10.
- 152.4 In addition to the information otherwise required under this section, each parent or guardian of a child under six (6) years of age attending a Facility shall submit, and the Licensee shall maintain and provide to OSSE upon request, documentation with respect to blood tests for lead poisoning as follows:
- (a) Documentation, preferably in the form of a Certificate of Testing for Lead Poisoning, that the child was tested between the ages of six (6) months and fourteen (14) months, and again between the ages of twenty-two (22) months and twenty-six (26) months; or
 - (b) If the child was not tested before the age of twenty-six months (26), the child was or will be screened two (2) times before the age of six (6) years. Lead test results will be valid for two (2) months from date of testing and the results will not exclude a child from school-related programs or activities.
- 152.5 Blood tests for lead poisoning shall be conducted, and results shall be disseminated and maintained, in accordance with the Childhood Lead Poisoning Screening and Reporting Act of 2002, effective October 1, 2002 (D.C. Law 14-190; D.C. Official Code §§ 7-871.01 *et seq.*).
- 152.6 Licensee shall maintain documentation at the Facility at all times evidencing that enrolled children have received all required immunizations, health and oral examinations, or evidence that a child is exempted from a requirement, pursuant to Subsection 152.10.
- 152.7 An enrolled child's compliance with requirement to have annual health and oral examinations shall include a thirty (30) day grace period from the child's birthday or date of required annual examination for parents to meet all required health and oral examinations.
- 152.8 An enrolled child's compliance with the requirement to be immunized, shall include a ten (10) day grace period from the child's birthday or date of required annual immunization for all required immunizations.
- 152.9 An enrolled child's compliance with the requirement to be immunized and have health and oral examinations shall include a sixty (60) day grace period from the

first day of service for a child experiencing homelessness or a ward of the District in foster care.

152.10 The following groups are exempted from receiving the immunizations required in Subsection 152.3:

- (a) Children whose parents object on religious grounds; and
- (b) Children whose medical condition requires that immunizations not be given or for whom immunization is determined to be not medically advisable.

152.11 If immunizations have not been administered because of a medical condition, the child's parent(s) or guardian(s) shall provide documentation from the child's licensed health care provider stating that because of a medical condition the child should not receive a particular immunization.

152.12 If immunizations have not been administered because of the child's parent(s) or guardian(s)' religious beliefs, the parent(s) or guardian(s) shall provide documentation stating that they have a good faith religious objection to immunizing their child to the Licensee.

152.13 If unimmunized children are exposed to a vaccine-preventable disease at the Facility, the Licensee shall contact the Department of Health to determine the action they should take (if any) related to the unimmunized children.

153 HEALTH, SAFETY AND WELFARE: MEDICATION ADMINISTRATION AND STORAGE

153.1 A Licensee shall not administer medication or treatment to a child in care, with the exception of emergency first aid, whether prescription or non-prescription, unless:

- (a) Parental permission to administer the medication or treatment is documented on a completed, signed, and dated medication authorization form that is received by the Licensee before the medication or treatment is administered;
- (b) A licensed health care practitioner has approved the administration of the medication and the medication dosage; and
- (c) The individual administering the medication has completed an approved medication training program or the individual is a registered nurse, licensed practical nurse, or medication technician certified by the District of Columbia Board of Nursing to administer medication to children in care.

- 153.2 A Licensee shall not administer prescription medication to a child unless at least one (1) dose of the medication has been given to the child at home at a previous date or time.
- 153.3 If medication is by prescription, it shall include a label from the pharmacy or a licensed health care practitioner with the following:
- (a) The child's name;
 - (b) The date of the prescription;
 - (c) The name of the medication;
 - (d) The medication dosage;
 - (e) The administration schedule;
 - (f) The method of administration;
 - (g) If applicable, special instructions, such as "take with food";
 - (h) The duration of the prescription;
 - (i) An expiration date that states when the medication is no longer useable; and
 - (j) The name and telephone number of the child's licensed health care practitioner.
- 153.4 Medication shall be administered according to the instructions on the label of the medication container or a licensed health care practitioner's written instructions, whichever is most recently dated.
- 153.5 A Licensee shall maintain a medication log, on a form approved by OSSE. Each time medication is administered to a child, a staff person shall enter the date, time of day, medication, medication dosage, method of administration, and the name of the person administering the medication in the medication log.
- 153.6 For each child for whom medication is administered at the Facility, a Licensee shall obtain a daily written statement from the parent or guardian, indicating when the last dose was administered prior to the child's arrival to the Facility. A Licensee shall add the information from the written statement to the medication log described in Subsection 153.5.
- 153.7 A Licensee shall maintain all records pertaining to the administration of each

medication to each child for a period of at least three (3) years after the administration of said medication. The record shall include the written medical prescription or order from the licensed health care practitioner, the written instructions and authorization of the parent(s) or guardian(s), and the completed medication log. A Licensee shall make these records available for review by OSSE upon request.

- 153.8 After receiving written consent from a child's parent(s) or guardian(s), a Licensee may apply nonprescription topical ointments, including petroleum jelly, diaper rash products, sunscreen, or insect repellent supplied by the child's parent(s) or guardian(s) without prior approval of a licensed health care practitioner.
- 153.9 Application of a diaper rash product, sunscreen, or insect repellent supplied by a child's parent shall be noted in the child's record.
- 153.10 Each medication, whether prescription or non-prescription, shall be:
- (a) Labeled with the child's name, the dosage, and the expiration date;
 - (b) Stored in its original container as directed by the manufacturer, the dispensing pharmacy, or the prescribing physician; and
 - (c) Discarded according to guidelines of the Office of National Drug Control Policy or the U.S. Environmental Protection Agency, or returned to the child's parent upon expiration or discontinuation of use for proper disposal.
- 153.11 A Licensee shall ensure that, unless otherwise indicated by a written medical prescription or order, each medication requiring refrigeration is maintained at a temperature between thirty-six degrees Fahrenheit (36°F) and forty-six degrees Fahrenheit (46°F). All refrigerated medications are to be kept in a separate storage container within the Facility's refrigerator to prevent potential cross-contamination with foods and beverages.
- 153.12 Before a child may self-administer medication while in care, a Licensee shall:
- (a) Have a written order from the child's physician and the written request of the child's parent for the child's self-administration of medication; and
 - (b) In consultation with the child's parent, establish a written procedure for self-administration of medication by the child based on the physician's written order.
- 153.13 If the child fails to follow the written procedure required by Subsection 153.12, a staff member shall administer any remaining medication dosage, document the administration of medication, and notify the child's parent of such administration.

154 HEALTH, SAFETY AND WELFARE: PREVENTION OF AND RESPONSE TO FOOD ALLERGIES

154.1 A Licensee shall have a written care plan for each child with a food allergy prepared for the Facility by the child's parent(s), guardian(s), or licensed health care practitioner, which shall include:

- (a) Instructions regarding the food to which the child is allergic and steps that need to be taken to avoid that food; and
- (b) A detailed treatment plan to be implemented in the event of an allergic reaction, including the names, doses, and methods of administration of any medications that the child should receive in the event of a reaction. The plan should include specific symptoms that would indicate the need to administer one or more medications.

154.2 Based on a child's care plan, the Licensee shall ensure that the staff members are trained to:

- (a) Prevent exposure to the specific food to which the child is allergic;
- (b) Recognize the symptoms of an allergic reaction; and
- (c) Treat allergic reactions.

154.3 The written care plan, a mobile phone, and the proper medications for appropriate treatment if the child develops an acute allergic reaction shall be carried on field trips.

154.4 A Licensee shall immediately notify the parent(s) or guardian(s) of any suspected allergic reactions of an enrolled child, as well as the ingestion of or contact with the problem food even if a reaction did not occur.

154.5 A Licensee shall prominently post food allergy notifications near the Facility's entrance and in each classroom of an enrolled child with food allergies. This notification shall not include the child's name or any other identifying information.

155 HEALTH, SAFETY AND WELFARE: FOOD SERVICE

155.1 A Licensee that stores, prepares, handles, and serves food shall comply with, or ensure that any entity providing food complies with, the requirements consistent with the District of Columbia Food Code, Title 25-A DCMR, and shall obtain and maintain all certifications or licenses required under the applicable laws and regulations of the District of Columbia

- 155.2 A Licensee shall ensure that planned daily menus, and the foods that are actually served by the Facility, are varied, suitable to the ages and developmental levels of the children, and consistent with the meal pattern requirements and nutrition standards specified by the Child and Adult Care Food Program.
- 155.3 A Licensee shall plan and publicly post menus for all foods served, including snacks, and shall modify the menus as necessary to reflect foods actually served. A Licensee shall maintain the menus at the Facility's premises for at least three (3) years.
- 155.4 A Licensee shall have at least one (1) staff member present at all times when meals are being prepared or served who is certified as a Food Protection Manager in accordance with the District of Columbia Food Code, 25-A DCMR. The staff member shall have a valid and current certification.
- 155.5 A Licensee shall ensure that staff responsibilities concerning food preparation and service do not reduce the adult-to-child ratios for staff actively supervising children below the levels specified in this chapter or interfere with the implementation of the Facility's program of activities.
- 155.6 A Licensee shall ensure that no person is involved in food preparation or service, or otherwise works in the food preparation or service area, if that person shows signs or symptoms of illness, including vomiting, diarrhea, or uncovered infectious skin sores, or if that person is actually or probably infected with any bacterium or virus that can be carried in food.
- 155.7 A Licensee shall request and obtain, if applicable, from a child's parent(s) or guardian(s) all relevant information regarding dietary restrictions and food allergies for that child upon the child's admission to the Facility, and the Licensee shall record this information in the child's file.
- 155.8 A Licensee shall request at least annually and if applicable obtain from a child's parent(s) or guardian(s) updated information regarding the child's dietary restrictions and food allergies.
- 155.9 A Licensee shall ensure that all staff responsible for food preparation and distribution are immediately informed, orally and in writing, of any dietary restrictions, food allergies, or other special dietary requirements of enrolled children at the Facility.
- 155.10 A Licensee shall serve a special therapeutic diet to a child only upon written approval from the child's parent(s) or guardian(s), accompanied by written instructions from the child's licensed health care practitioner.
- 155.11 A Licensee shall provide and ensure that each child uses, at each meal or snack,

clean and sanitary individual eating and drinking utensils. Reusable utensils shall be washed and sanitized after each use.

- 155.12 A Licensee that serves food provided by the parent(s) or guardian(s) shall:
- (a) Establish and implement written policies and procedures to be followed if the food provided does not meet the requirements in this section; and
 - (b) Ensure that food provided by the parent(s) or guardian(s) shall not be commingled with food prepared at the Facility and may be stored in a separate refrigerator.
- 155.13 A Licensee shall ensure that powdered milk or reconstituted evaporated milk is not served as a substitute for fluid milk for drinking. A Licensee may use powdered milk or reconstituted evaporated milk for cooking.
- 155.14 A Licensee shall make drinking water continuously available to all children and serve drinking water on demand.
- 155.15 A Licensee shall ensure that appropriately timed meals and snacks, consistent with the Child and Adult Care Food Program, that meet the nutritional requirements of the child are served according to the following schedule, based on the number of hours a child is present at the Facility. If the child is present for:
- (a) Two (2) to four (4) hours, child receives one (1) snack or one meal;
 - (b) Four (4) to six (6) hours, child receives one (1) meal and one (1) snack or two meals;
 - (c) Seven (7) to eleven (11) hours, child receives two (2) meals and one (1) snack or two (2) snacks and one (1) meal, depending on the time of arrival of the child; and
 - (d) Twelve (12) hours or more, child receives three (3) meals and two (2) snacks.

156 HEALTH, SAFETY AND WELFARE: INFANT FEEDING

- 156.1 This section shall only apply to a licensed Facility that provides care services to infants.
- 156.2 A Licensee shall comply with the following requirements concerning infant formula and feeding:
- (a) Each feeding bottle for an infant or toddler shall be labeled with the name of the child to whom it belongs;

- (b) Each bottle of milk or formula shall be labeled with the date of preparation, and refrigerated at thirty-five to forty degrees Fahrenheit (35°F - 40°F);
- (c) Each open container of ready-to-feed or concentrated formula shall be used for only one (1) child, and shall be labeled with that child's first and last name and the date on which the container is opened;
- (d) All infant formula given to a child shall be prepared according to written instructions obtained from the parent(s) or guardian(s) of that child or from the child's licensed health care practitioner;
- (e) All bottles and formula preparation equipment shall be washed with hot water and detergent in sinks which are not designated for hand washing only;
- (f) Bottles, bottle caps, nipples, and other equipment used for bottle feeding shall not be reused without first being cleaned and sanitized by washing in a dishwasher or by washing, rinsing, and boiling them for one (1) minute;
- (g) Each bottle of reconstituted concentrated or powdered formula shall be refrigerated immediately after its preparation, or immediately upon its arrival at the Facility if it is prepared and brought to the Facility by the child's parent(s) or guardian(s), and may be held for feeding for no longer than twenty-four (24) hours;
- (h) Each bottle of commercially prepared ready-to-feed formula shall be refrigerated promptly after it is opened;
- (i) After each feeding, discard any unused:
 - (1) Formula within one hour of feeding; and
 - (2) Breast milk, if less than one ounce, otherwise return remaining breast milk to the mother;
- (j) Each bottle or container of breast milk provided for a child by the parent(s) or guardian(s) of that child shall be labeled with the child's first and last name and the date of receipt, and refrigerated immediately upon its arrival at the Facility;
- (k) Fluid breast milk may be held for a feeding for no more than twenty-four (24) hours, and frozen breast milk may be held in a frozen state for no more than two (2) months;

- (l) Bottles shall be warmed under running, warm tap water or by placing them in a container of water that is no warmer than one hundred and twenty degrees Fahrenheit (120°F). Bottles shall not be left in a pot of water to warm for more than five (5) minutes;
- (m) Microwaving of breast milk is prohibited. If the Facility plans to use this method of heating formula or other liquids and foods, the Licensee shall notify a child's parent(s) or guardian(s) in writing;
- (n) All warmed bottles shall be shaken and temperature tested before feeding to a child. Warmed solid foods shall be stirred and temperature tested before feeding to a child. Liquid and food shall be room temperature;
- (o) A Licensee shall provide, or require the parent(s) or guardian(s) of each infant to provide, a sufficient supply of commercially prepared formula so that the child will be adequately fed in the event of emergency;
- (p) Each child who is too young or otherwise developmentally unable to use a feeding chair or other appropriate seating apparatus shall be held while being fed;
- (q) Each child who is too young, too small, or otherwise developmentally unable to hold his or her bottle while feeding shall be held while being fed; and
- (r) A Licensee shall provide a comfortable and secluded location where mothers may breast-feed their children on-site.

156.3 A Licensee shall comply with the following requirements concerning infant solid food:

- (a) All solid food provided to an infant shall be served according to written instructions, which specify the amount(s) and type(s) of food and feeding times that are requested and obtained by the Facility from the parent(s) or guardian(s) of that child or from the child's licensed health care practitioner;
- (b) Each container of infant food that is provided to the Facility by the parent(s) or guardian(s) of a child for feeding to that child shall be labeled with the child's first and last name and the date of receipt;
- (c) Each container of infant food shall be refrigerated immediately upon its arrival at the Facility, with the exception of unopened containers of commercially prepared bottled or canned food that may be stored at room temperature until opened; and

- (d) The uneaten portion of any container of infant food shall be immediately and appropriately refrigerated shall not be comingled with any other food prepared at the Facility, and shall not be held for further consumption for longer than twenty-four (24) hours;.

156.4 Unless the Facility has received written notice from the child's licensed health care practitioner or medical authority, a Licensee shall follow the Child and Adult Care Food Program infant meal patterns.

157 REQUIREMENTS FOR A CHILD DEVELOPMENT FACILITY DURING SWIMMING AND WATER PLAY

157.1 A Licensee shall maintain constant and active supervision when any child is in or around water.

157.2 Before an enrolled child may be permitted to swim or otherwise participate in any activity taking place in water one (1) or more feet in depth, the Licensee shall obtain written permission from the child's parent(s) or guardian(s). The written permission shall be signed, dated, and include the following:

- (a) The child's name;
- (b) A statement indicating whether the child is a swimmer or a non-swimmer; and
- (c) A statement indicating that the parent(s) or guardian(s) grants permission for the child to participate in water activities.

157.3 A Licensee shall ensure the inaccessibility of pools, including swimming pools, fixed-in-place wading pools, hot tubs, spas, fish ponds, or similar bodies of water by using a pool cover or by surrounding the pool with a fence. If a Facility premises contains a swimming pool or other body of water without a cover, the Licensee must enclose the pool or body of water behind a secure fence that is at least four feet (4 ft.) in height. A Licensee shall ensure that the pool or body of water is inaccessible to children at all times, unless qualified adults are present and supervising the children.

157.4 Exit and entrance points to pools or bodies of water shall have self-closing, positive latching gates with locking devices a minimum of fifty-five (55) inches from the ground.

157.5 If a Facility chooses to utilize one (1) or more wading pools, the Licensee shall ensure that such pools are cleaned, emptied, and drained daily, and stored in a location that is inaccessible to the enrolled children unless qualified adults are present and supervising the children.

157.6 A Licensee shall ensure that any swimming site utilized by the Facility that is at a location other than at the Facility’s premises is a public site, approved of and regulated by the appropriate local authorities.

157.7 A Licensee shall ensure that children are swimming or playing in water, including baby pools, wading pools, and full-depth pools are supervised by at least one (1) adult, who is currently certified as a Lifeguard or Water Safety Instructor by the American Red Cross or by an equivalent water safety instruction and testing program, for every six (6) children.

157.8 A Licensee shall ensure when children are swimming or playing in water, including baby pools, wading pools, and full-depth pools, the Licensee shall maintain the following adult-to-child ratios, in addition to complying with the water safety requirements as provided in this chapter:

AGE OF CHILDREN	ADULT-TO-CHILD RATIO
0 - 36 months	1:1
3 - 4 years	1:4
5 - 6 years	1:6
7 -10 years	1:6
11 years and older	1:6

- 157.9 A Licensee shall ensure that when communal water tables are used:
- (a) At least one (1) adult for every six (6) children shall be certified in pediatric First Aid and CPR and in attendance. Adult-to-child ratios as set forth in Section 121 shall be maintained;
 - (b) Water tables are filled with fresh water immediately before a designated group of children begin a water play activity at the table;
 - (c) The basin and toys are washed and sanitized daily;
 - (d) Only children without cuts, scratches, and sores on their hands are permitted to use the communal water play table;
 - (e) Children wash their hands before and after use of the communal water play table;
 - (f) No child is permitted to drink water from the water play table;
 - (g) Floor and surface areas under and around the water play table are dried during and after play; and

(h) Bottles, cups, and glasses are not used during water play.

**158 REQUIREMENTS FOR A CHILD DEVELOPMENT FACILITY
TRANSPORTING CHILDREN**

- 158.1 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall comply with all applicable federal and District of Columbia laws and regulations governing the maintenance and operation of motor vehicles and the transportation of children.
- 158.2 A Licensee that enters into contracts with other entities for the provision of transportation services shall obtain a signed attestation from the entity that the transportation service complies with the requirements of this section and with all other applicable laws and regulations pertaining to the provision of transportation services.
- 158.3 A Licensee shall establish and implement policies and procedures intended to ensure the safe transportation of children, including background checks, and policies and procedures for the training and monitoring of any person responsible for the transportation of enrolled children.
- 158.4 A Licensee transportation policies and procedures shall address alternative transportation means to be employed if the Facility's primary vehicle breaks down or is otherwise unavailable for use.
- 158.5 Before any child may be transported while under the care of a Facility, the Licensee shall obtain signed permission from the child's parent(s) or guardian(s).
- 158.6 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall label the exterior of each such vehicle, with the Facility's licensed name and phone number.
- 158.7 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall maintain proof of current motor vehicle insurance coverage for each such vehicle, both at the Facility premises and inside the vehicle.
- 158.8 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall ensure that only licensed drivers who are covered by the Facility's insurance policy operate any such vehicle when transporting enrolled children.
- 158.9 A Licensee shall immediately notify OSSE of any traffic accident involving children being transported while under the care of the Facility. A Licensee shall also submit a written report to OSSE in accordance with Section 128 (Reporting Unusual Incidents), on a form approved by OSSE, within twenty-four (24) hours

of the accident, and shall include a copy of the police report regarding the accident, if available.

- 158.10 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall ensure that each such vehicle is maintained in a clean and mechanically safe condition, as verified by a current inspection sticker from the District of Columbia Department of Motor Vehicles or the equivalent agency in another state and by the Facility's own maintenance records.
- 158.11 A Licensee that rents, owns, operates, or maintains one or more motor vehicles used for transporting children shall maintain an inspection log and service and repair records for each such vehicle on file for at least twelve (12) months from the date of each inspection, service visit, or repair. A person or parent entity that operates multiple licensed Facilities may maintain all such records at a single administrative office, provided that the records are made available to OSSE upon request.
- 158.12 A Licensee shall ensure that no staff member who has been convicted in any jurisdiction of Driving While Intoxicated (DWI), Driving under the Influence of Alcohol or Drugs (DUI), or an equivalent offense within the previous three (3) years, transports any enrolled children by motor vehicle, to or from the Facility. A Licensee shall also prohibit any other person, including a parent, guardian, or volunteer, who has been convicted of a DWI, DUI, or an equivalent offense within the previous three (3) years, from transporting any children (other than their own) who are enrolled at the Facility, by motor vehicle, to or from the Facility, and shall advise all parents, guardians, and volunteers of this policy in writing.
- 158.13 If the primary driver identified by a Facility becomes unavailable, the Licensee shall identify and utilize a substitute driver who meets the requirements of this section.
- 158.14 A Licensee shall ensure that no driver engages in distracting activities including, but not limited to, smoking, drinking, eating, listening to music, texting, talking on the phone, and using of any other portable devices, while transporting enrolled children.
- 158.15 A Licensee shall ensure that each child transported in a motor vehicle while under the care of the Facility is properly restrained in an approved child safety restraint system or a seat belt, as required by applicable District of Columbia laws and regulations.
- 158.16 A Licensee shall ensure that no child, staff member, or volunteer stands or sits on the floor of a vehicle while the vehicle is in motion, and that no child is held on another person's lap while the vehicle is in motion.

- 158.17 A Licensee shall ensure that all vehicle doors remain locked at all times, except when staff, volunteers, the driver, or children are boarding or departing the vehicle.
- 158.18 A Licensee shall ensure that no child is left unattended in a vehicle at any time, regardless of conditions.
- 158.19 A Licensee shall maintain a safe vehicle loading and unloading area for children on or adjacent to the Facility's premises.
- 158.20 A Licensee shall ensure that identification is securely attached to each child participating on a field trip and that the identification contains the Facility's licensed name, address, telephone number, and, if applicable, any emergency contact telephone number.
- 158.21 A Licensee shall ensure that the following items are present in each vehicle when transporting children on field trips or other routine trips:
- (a) A transportable first aid kit;
 - (b) A working and regularly serviced fire extinguisher;
 - (c) A supply of drinking water sufficient for the duration of the trip for all children in the vehicle;
 - (d) A minimum of two (2) large clean towels or blankets;
 - (e) Emergency contact information and telephone numbers for each parent(s) or guardian(s) of each child in the vehicle;
 - (f) A copy of the signed Emergency Medical Treatment Authorization form, as required by Subsection 130.2(j) of this chapter, for each child in the vehicle;
 - (g) A cellular phone or a two-way radio;
 - (h) A working flashlight; and
 - (i) If children are being transported in a bus, van, or other large vehicle, a footstool or equivalent aid sufficient to enable all children to safely board and disembark from the vehicle.
- 158.22 A Licensee shall ensure that at least one staff member trained and currently certified in First Aid and CPR for children is present in each vehicle when children are being transported.

- 158.23 When a child with special needs is being transported in a wheelchair while under the care of a Facility, the Licensee shall comply with the following additional safety requirements:
- (a) The vehicle shall be equipped with a working wheelchair lift;
 - (b) The child's wheelchair shall be secured in the motor vehicle, using a minimum of four (4) anchorages attached to the floor of the vehicle, and four (4) securing devices, such as straps or webbing that have buckles and fasteners, which attach the wheelchair to the anchorages;
 - (c) The child shall be secured in the wheelchair by means of a wheelchair restraint that contains a combination of pelvic and upper body belts; and
 - (d) The child's wheelchair shall be placed in a position in the vehicle that neither prevents access to the child nor passage to the front and rear of the motor vehicle.
- 158.24 A Licensee providing transportation services shall ensure that children who receive such services are taught, in a manner appropriate to the children's developmental level:
- (a) Safe riding practices;
 - (b) Safety procedures in crossing the street; and
 - (c) Recognition of the danger zones around the vehicle.
- 158.25 Any driver who transports children for a Licensee shall keep instructions for the quickest route to the nearest emergency medical Facility from all points on the planned route in the vehicle.
- 159 REQUIREMENTS FOR A CHILD DEVELOPMENT FACILITY CARING FOR CHILDREN WITH SPECIAL NEEDS**
- 159.1 A Licensee shall make reasonable efforts to determine if any child under its care is a child with a disability, as defined by the Individuals with Disabilities Education Act, (Pub.L 101-476; 20 U.S.C. §§ 1400 *et seq.*), with an Individualized Family Service Plan (IFSP), and be aware of any obligations that the Licensee may have pursuant to the IFSP.
- 159.2 If a Licensee is provided with a copy of the IFSP as a member of the IFSP team or if the child's parent has provided the IFSP or provided written consent to release the IFSP to the Licensee, the Licensee shall maintain a copy of the child's current IFSP on file at all times during the student's enrollment at the facility.

- 159.3 A Licensee shall provide a child's IFSP service coordinator or service provider access to the Facility in order to provide services pursuant to the child's IFSP.
- 159.4 If the child's IFSP is implemented while in the care of the Licensee, the Licensee shall work with the child's IFSP service coordinator or service provider to develop a plan for incorporating the IFSP goals and strategies into the child's daily routine at the Facility.
- 159.5 When disclosing any information concerning a child with an IFSP plan to any person, including a licensed health care practitioner, who is not employed by the Facility, the Licensee shall comply with privacy and disclosure requirements under Federal and local IDEA laws and regulations, including, but not limited to, any requirement to obtain written consent from the child's parent or guardian before making any disclosure.
- 159.6 A Licensee shall make reasonable efforts to determine if any child under its care is a child with any disability and be aware of the Licensee's obligations to provide any accommodations required by law.
- 159.7 A Licensee shall provide each child with a disability with:
- (a) Developmentally appropriate toys and materials;
 - (b) Developmentally appropriate play equipment which meets the requirements of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*;
 - (c) Appropriate assistance and attention from staff members and volunteers; and
 - (d) Reasonable accommodations to enable the child to participate in all services and activities provided by the Facility to children without a disability, including field trips.

160 REQUIREMENTS FOR A CHILD DEVELOPMENT FACILITY OPERATING DURING NON-TRADITIONAL HOURS

- 160.1 Facilities that offer care during non-traditional hours or twenty-four (24) hour care shall comply with all applicable requirements contained in this chapter, in addition to the specific requirements listed in this section.
- 160.2 A Licensee shall ensure that each activity is appropriate both for the time of the day or night and for the age of each enrolled child.
- 160.3 A Licensee shall obtain written consent from a child's parent(s) or guardian(s) before Facility staff bathe or shower that child, with the exception that in

emergency situations or where necessary to protect a child's hygiene, such as after regurgitation or bedwetting, Facility staff may take appropriate measures to clean an affected child.

160.4

A Licensee shall meet the following requirements for rest and sleep:

- (a) If a child is in the care of the Facility after 6:00 p.m., on the first day of the child's enrollment, the Licensee shall establish a bedtime routine, in consultation with that child's parent(s) or guardian(s) and taking into account the age and developmental needs of the child and the time of the child's scheduled pick-up from the Facility. A Licensee shall document the routine in that child's record;
- (b) A Licensee shall provide each enrolled child with an individual crib, cot, or bed that is appropriate for the child's age and size. If the child will be sleeping for more than four (4) hours and is age and size appropriate, a bed, rather than a cot, shall be provided;
- (c) A Licensee shall ensure that bedding, such as sheets or blankets, are changed routinely and before the crib, cot, or bed is used by a different child;
- (d) A Licensee shall provide, or shall ensure that each enrolled child's parent(s) or guardian(s) provide, appropriate clothing for the child to wear while sleeping;
- (e) A Licensee shall ensure that all cribs, cots, and beds are maintained in a clean and sanitary condition;
- (f) If a Facility provides one or more bunk beds for the use of enrolled children, the Licensee shall ensure that no child under seven (7) years of age is placed on a top bunk;
- (g) A Licensee shall ensure that all beds, cots, cribs and mattresses have firm surfaces and meet the U.S. Consumer Product Safety Commission's standards;
- (h) A Licensee shall ensure that all beds, cots, and cribs, when in use, are placed at least two (2) feet apart, and that each is at least two (2) feet away from any radiator or window;
- (i) A Licensee shall ensure that no bed, cot or crib blocks or impedes access to any exit;
- (j) A Licensee shall ensure that no other person shares a crib, cot, or bed with an enrolled child;

- (k) A Licensee shall ensure that no enrolled child five (5) years of age or older shares a sleeping room with an adult;
- (l) A Licensee shall ensure that staff monitor sleeping children at least once every three (3) hours and maintain a written log of this monitoring; and
- (m) A Licensee shall provide night-lights near the exit of each room used for sleeping, along each hallway adjacent to a room used for sleeping, and near each bathroom to be used by enrolled children during the overnight hours.

160.5 A Licensee that provides non-traditional hours or twenty-four (24) hour care to school-age children shall comply with the following additional requirements:

- (a) A Licensee shall establish a homework routine for each school-age child, in consultation with the parent(s) or guardian(s) of that child, on the first day of enrollment, and shall document the routine in that child's record;
- (b) A Licensee shall ensure that each school-age child is afforded quiet time and is provided with a quiet area for doing homework, as needed;
- (c) Facility staff or volunteers shall provide assistance with homework, when needed; and
- (d) If an enrolled child is to leave for school directly from the Facility, the Licensee shall, on or before the first day of enrollment, enter into a written agreement with that child's parent(s) or guardian(s) that specifies the means by which the child shall get to school and the person(s) responsible for accompanying the child to school. A Licensee shall maintain a copy of this countersigned agreement in the child's record.

160.6 A Licensee shall comply with all applicable requirements concerning nutrition that are contained within this chapter, in addition to the following special requirements:

- (a) A Licensee shall provide breakfast to each child who has been in care overnight at the Facility and is leaving for school directly from the Facility, unless the Facility and the child's parent(s) or guardian(s) enter into a written agreement specifying that the child will eat breakfast prior to arrival or while at school; and
- (b) A Licensee shall provide or serve dinner and a snack to each child scheduled to remain in care overnight, unless the Facility and the child's parent(s) or guardian(s) enter into a written agreement specifying that the child will eat dinner before arriving at the Facility.

- 160.7 A Licensee providing non-traditional hours or twenty-four (24) hour care shall comply at all times with the adult-to-child ratio and staff qualifications requirements provided for in this chapter.
- 160.8 A Licensee shall ensure that staff members are available at all times to attend to the needs of the children, and that at least one (1) adult staff member per every ten (10) children is awake and within sight and sound of the children at all times.
- 160.9 A Licensee shall establish and implement emergency contingency plans to address both medical and non-medical emergencies at all hours of the day or night during which care may be provided, including during natural and man-made emergencies that require evacuation from the Facility, temporary displacement from the Facility, or confinement to the Facility.

161 REQUIREMENTS FOR A CHILD DEVELOPMENT FACILITY WITH PETS AND ANIMALS

- 161.1 If a Facility permits pets or animals at the Facility's premises, it shall comply with the following requirements:
- (a) A Licensee shall adhere to all local laws, regulations, and ordinances governing the keeping and maintenance of pets or animals;
 - (b) A Licensee shall maintain at the Facility premises proof of current compliance with all applicable registration and vaccination requirements for each pet or animal kept or maintained at the Facility;
 - (c) A Licensee shall advise the parent(s) or guardian(s) of prospective and enrolled children in writing of the presence of pets or animals;
 - (d) A Licensee shall ensure that all pets or animals permitted at the premises are in good health, show no evidence of carrying disease, are friendly toward children, and do not present a threat to the health, safety and welfare of children;
 - (e) A Licensee shall maintain all pets or animals in a visibly clean manner;
 - (f) A Licensee shall isolate any pet or animal showing evidence of disease, such as diarrhea, skin infection, severe loss of appetite, weight loss, lethargy, or any unusual behavior or symptoms. A Licensee shall ensure that any pet or animal suspected of being ill is promptly excluded from the presence of enrolled children and examined by a licensed veterinarian;
 - (g) A Licensee shall prohibit the presence of any pet or animal whose species is a common carrier of rabies, without specific proof that the pet or animal

has been vaccinated against that disease;

- (h) All pet reptiles shall be kept inaccessible to children at all times;
- (i) A Licensee shall ensure that no pet or animal, except a service animal accompanying the person for whom the animal provides assistance, litter box, or pet or animal pen or cage is permitted in any area where food is stored, prepared, or served; and
- (j) If an animal bites a child and the child's skin is broken, the Licensee shall immediately notify the child's parent(s) or guardian(s) and OSSE, and shall report it as an unusual incident pursuant to this chapter.

161.2 Licensee shall ensure that all contact between pets, animals, and children is supervised by a staff member who is in close enough proximity to remove the child immediately, if necessary.

161.3 Licensee shall ensure that pet and animal food supplies are kept out of reach of children.

161.4 Licensee shall ensure that pet and animal litter boxes are not located in areas accessible to children.

162 CHILD DEVELOPMENT CENTER: ADDITIONAL REQUIREMENTS

162.1 All licensed child development centers shall meet the requirements in Sections 118 through 166.

162.2 A licensed Child Development Center shall be managed by a Center Director. The Center Director may be assisted by Teachers, Assistant Teachers, Aides, Group Leaders, or Assistant Group Leaders, as further specified in this chapter. In all Centers, the Center Director and staff may be assisted by volunteers.

162.3 Each employee or volunteer at the Child Development Center shall be mentally, physically, and emotionally capable of complying with the requirements of this chapter and performing the essential duties and activities related to child care and early childhood education.

162.4 Child Development Centers shall not permit a person with a reportable communicable disease that can be transmitted through ordinary contact with children and staff members to be on duty in program space, or in common indoor or outdoor spaces utilized by the children, or to have contact with a child at the Center, without prior written approval from a licensed health care practitioner.

163 CHILD DEVELOPMENT CENTER: INDOOR AND OUTDOOR PROGRAM SPACE

- 163.1 For the purposes of this section, "Program Space" is defined as space within the Child Development Center, that does not include the following:
- (a) Food preparation areas;
 - (b) Kitchens;
 - (c) Bathrooms;
 - (d) Toilets;
 - (e) Offices;
 - (f) Staff rooms;
 - (g) Corridors;
 - (h) Hallways;
 - (i) Stairways;
 - (j) Closets;
 - (k) Lockers;
 - (l) Laundry rooms;
 - (m) Furnace rooms;
 - (n) File cabinets;
 - (o) Storage spaces; and
 - (p) Non-movable furniture that is not designed for the use of enrolled children.
- 163.2 Child Development Centers shall provide adequate indoor program space for the daily program of the Center. OSSE shall determine the licensed capacity of each Center serving infants, toddlers, and/or preschoolers in accordance with Subsection 122.2.
- 163.3 Children under the age of two (2) years, or non-ambulatory children, may only occupy Center space that:
- (a) Is on street level;

- (b) Has two (2) means of egress; and
- (c) If the means of egress involve steps, has ramps in place to enable staff to put children in evacuation cribs or flat strollers to roll them out in the event of an emergency, unless the lack of a ramp at any means of egress has been approved by FEMS.

163.4 Child Development Centers shall ensure that adequate room is provided for all program activities, and shall:

- (a) Arrange the space to permit the easy accommodation of the entire range of activities offered by the program;
- (b) Arrange the space so that various activities may occur simultaneously without disruption of one by another; and
- (c) Ensure that there is adequate and convenient storage space for equipment, materials, and the personal possessions of enrolled children and Facility staff.

163.5 If a Child Development Center is located in a building that also houses other entities or persons, the portion of the building to which the children from the Center have access shall be for the exclusive use of children and staff of the Center during the Center's normal hours of operation, with the exception of entryways, hallways, and other common areas in the building normally available for use by the public. If unrelated business is conducted in child care areas when the Child Development Center is not in operation, activities associated with such business should not leave any residue in the air or on the surfaces or leave behind materials or equipment that can be harmful to children.

163.6 Child Development Centers serving infants, toddlers, or preschoolers shall provide suitable age-appropriate outdoor play space. This play space shall be at:

- (a) An enclosed area, including a yard or playground, on the Facility's premises;
- (b) A nearby park or playground; or
- (c) A rooftop play space that meets the requirements of this chapter.

163.7 Child Development Centers shall provide, or have access to, a minimum of sixty square feet (60 ft²) of outdoor play space per child, based on the maximum number of children scheduled to play outdoors at any one time.

164 CHILD DEVELOPMENT CENTER: DIRECTOR QUALIFICATIONS

AND RESPONSIBILITIES

164.1

A Director of a Child Development Center shall either:

- (a) Have earned, a bachelor's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with at least fifteen (15) semester credit hours, or its recognized equivalent, in early childhood development, early childhood education, elementary education, or early special education and at least one (1) year supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;
- (b) Have earned an associate's degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in early childhood education or early childhood development, and has at least three (3) years supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; and provided that he or she earns a bachelor's or more advanced degree as described in Subsection 164.1(a) within six (6) years of the effective date of this chapter; or
- (c) Have earned at least forty-eight (48) credit hours from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with at least fifteen (15) semester credit hours, or its recognized equivalent, in early childhood education or early childhood development, and have at least four (4) years of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; and be employed as a qualified Center Director in a licensed Child Development Center in the District of Columbia on the effective date of these regulations, provided that the Center Director achieves compliance with (a) or (b) within no more than six (6) years following the effective date of these regulations; or
- (d) For a Montessori School Director, earned a Montessori certificate issued by a program accredited by the Montessori Accreditation Commission for Teacher Education, National Center for Montessori Education, American Montessori Society, or the Association Montessori International, and have at least three (3) years of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction.

164.2

For the purpose of Subsection 164.1, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week.

One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

- 164.3 Any person who is employed as a qualified Center Director in a licensed Child Development Center in the District of Columbia on the effective date of these regulations, and who has continuously served as a Center Director for the past ten (10) years, may submit an application to OSSE for a waiver of the qualification requirements in Subsection 164.1, in accordance with the waiver process in Section 106 (Waiver). OSSE may deny a waiver when a Facility for which the Center Director was responsible received one or more summary suspensions or failed to abate or resolve the deficiencies, or for any other reason consistent with Section 106.
- 164.4 A private, parochial, or independent school is exempt from complying with the requirements of this Subsection 164.1, if the school:
- (a) Is an elementary/secondary educational program, as defined in this chapter;
 - (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
 - (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
 - (d) Does not offer subsidized child care.
- 164.5 For the purposes of this chapter, an early childhood development or early childhood education program shall include the following subject areas:
- (a) Growth and development of infants, toddlers, or preschoolers;
 - (b) Care and education of children with special needs;
 - (c) Health and physical education of infants, toddlers, or preschoolers;
 - (d) Therapy through play;
 - (e) Language development or early childhood literacy;
 - (f) Children's literature;
 - (g) Arts education;
 - (h) Child, adolescent, educational, or abnormal psychology;

- (i) Nutrition for children;
- (j) Family development;
- (k) Methods of teaching;
- (l) Classroom management;
- (m) Child behavior management;
- (n) Curriculum programs and activities for infants, toddlers, and/or preschoolers;
- (o) Educational evaluation and measurement;
- (p) Early Childhood Development or Youth Development administration;
- (q) Culturally responsive care and education; and
- (r) Any other area as determined by OSSE.

164.6 Prior to, or within one (1) year of employment as a Center Director, and annually thereafter, a Center Director shall successfully complete, a total of no less than twelve (12) hours of professional development, from a source approved by OSSE, in the following core knowledge areas with regard to program management, operations, and evaluation:

- (a) Approaches and techniques to plan, organize, and use available resources;
- (b) Effective strategies for working productively with staff and community resource individuals and agencies;
- (c) Techniques to conduct program analysis and evaluation and to implement program improvements;
- (d) Interpersonal development and communication skills, including team building, collaboration, and conflict management principals and skills; and
- (e) Fiscal planning and business management practices.

164.7 Interim or acting Center Directors shall meet the requirements in this section.

164.8 Center Directors shall attend, upon the request of OSSE, periodic regulatory compliance review sessions presented by or under the auspices of OSSE.

- 164.9 Center Directors shall be responsible for the supervision, program planning, and administration of the Child Development Center and its staff, consistent with the Center's written operational policies and procedures, and shall assume the following responsibilities:
- (a) Ensure compliance with the requirements of this chapter, and with all applicable Federal and District of Columbia laws and regulations;
 - (b) Select and supervise qualified staff and volunteers in accordance with the District of Columbia Career Guide for Early Childhood and Out-of-School-Time Professionals;
 - (c) Implement pre-service, orientation and annual health and safety training for each staff member and volunteer, as required;
 - (d) Monitor when staff members complete pre-service, orientation, and annual training, verify their completion, and record staff members' training in a document that is available during inspections;
 - (e) Ensure that adult-to-child ratios are maintained in compliance with this chapter at all times;
 - (f) Ensure that parents and guardians continuously have an opportunity to be involved in the program and in the activities of the Center;
 - (g) Report unusual incidents as defined by and in accordance with this chapter;
 - (h) Ensure that all staff members maintain a current CPR and First Aid certification;
 - (i) Participate in on-going in-service training and continuing education requirements, as required;
 - (j) Report evidence of child abuse and neglect that comes to the Facility staff's attention, in accordance with this chapter;
 - (k) Supervise curriculum implementation at the Center; and
 - (l) Ensure that staff members have access to ongoing professional development through registration in the District of Columbia's Early Learning Professional Development Information System.

- 164.10 A Center Director shall be physically present at the Facility at all times during the Center's peak hours of operation when the majority of children are present, and maintain on the premises a record of days and actual hours of work at the Facility,

except that a Center Director may be absent from the Facility if he or she has designated an authorized representative of the Child Development Facility, who shall be physically present at the Facility when the Center Director is absent. This authorized representative must meet all the qualification requirements of a Center Director and who assumes full responsibility for the Facility's management and operations in the absence of the Center Director.

164.11 Center Directors shall ensure that the written contingency plans for their Facility is applicable for all hours of the day, days of the week, and weeks of the year. If a written contingency plan designates a school or any other Facility as an emergency location, and the school or other Facility is not available for all days and times during which the Child Development Center operates, the written contingency plan shall identify a secondary emergency location and include a building use agreement for the secondary emergency location.

165 CHILD DEVELOPMENT CENTER: TEACHER QUALIFICATIONS AND RESPONSIBILITIES

165.1 A Teacher in a Child Development Center shall be at least eighteen (18) years of age and shall either:

- (a) Have earned, an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in early childhood education, early childhood development, child and family studies, or a closely related field;
- (b) Have earned an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in a field other than early childhood education, early childhood development, or child and family studies, earned at least twenty-four (24) semester credit hours, or its recognized equivalent, from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation in early childhood education, early childhood development, child and family studies, or a closely related field, and have at least one (1) year of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;
- (c) Have earned at least forty-eight (48) semester credit hours, or its recognized equivalent, from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, of which fifteen (15) semester hours, or its recognized equivalent, shall be in early childhood education, early childhood development, or child and family studies, and has at least at

least two (2) years of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; provided that he or she earns an associate's degree as described in (a) or (b) within four (4) years of the effective date of these regulations;

- (d) Have earned a high school diploma or its equivalent and a current Child Development Associate (CDA) credential, which specifies that the individual is qualified for the assigned age classification; provided that he or she earns an associate's degree in compliance with (a) or (b) within four (4) years of the effective date of these regulations; or
- (e) For a Montessori school teacher, have earned an associate's degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, and a Montessori certificate issued by the National Center for Montessori Education, American Montessori Society, or the Association Montessori International, or a program accredited by the Montessori Accreditation Commission for Teacher Education.

165.2 For the purpose of Subsection 165.1, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

165.3 For the purposes of this section, early childhood development and early childhood education shall include the courses listed in Subsection 164.5.

165.4 Any person who is employed as a qualified Teacher in a licensed Child Development Center in the District of Columbia on the effective date of these regulations, and who has continuously served as a Teacher for the past ten (10) years, may submit an application to OSSE for a waiver of the qualification requirements in Subsection 164.1, in accordance with the waiver process in Section 106 (Waiver). OSSE may deny a waiver for any reason consistent with Section 106.

165.5 The duties of a Teacher in a Child Development Center shall include, but not be limited to, the following:

- (a) Assisting the Center Director in ensuring compliance with this chapter;
- (b) Providing or overseeing the provision, adequate supervision, and appropriate care of all of the children in his or her class or group at all times;

- (c) Planning and initiating appropriate daily activities, which promotes positive development and learning,, based on the strengths, interests, and needs of all of the children in his or her class or group;
- (d) Assisting the Center Director in implementing the Facility's policies and procedures;
- (e) Communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their children;
- (f) Participating in on-going in-service training and continuing education requirements, as required;
- (g) Supervising subordinate staff;
- (h) Assuming responsibility for the program of the Facility in the absence of the Center Director, if designated to do so as provided for in Subsection 164.9; and
- (i) Performing other appropriate duties as requested by the Center Director.

165.6 A private, parochial, or independent school is exempt from complying with the requirements of this section, if the school:

- (a) Is an elementary/secondary educational program, as defined in this chapter;
- (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
- (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
- (d) Does not offer subsidized child care.

166 CHILD DEVELOPMENT CENTER: ASSISTANT TEACHER QUALIFICATIONS AND RESPONSIBILITIES

166.1 An Assistant Teacher in a Child Development Center shall be at least eighteen (18) years of age and shall either:

- (a) Have earned an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation;
- (b) Have earned a high school diploma or its equivalent, and have a current

CDA credential, which specifies that the individual is qualified to serve as an Assistant Teacher for the age classification with whom he or she will work;

- (c) Have earned a high school diploma or its equivalent, and certification of training and competence in the field of early childhood education or early childhood development from a duly authorized vocational high school; provided that he or she earns a CDA credential within two (2) years of the effective date of these regulations;
- (d) Have earned a high school diploma or its equivalent and have at least one (1) year of supervised occupational experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; provided that he or she earns a CDA credential within two (2) years of the effective date of these regulations; or
- (e) For a Montessori school Assistant Teacher, have earned a minimum of twenty (20) hours of Montessori specific training, completed an orientation program specific to the school, and works under the supervision of a Montessori credentialed lead teacher.

166.2 For the purpose of Subsection 166.1, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

166.3 The duties of an Assistant Teacher in a Child Development Center shall include, but not be limited to, the following:

- (a) Providing supervision and appropriate care to the children in his or her class or group, under the direct supervision of a Teacher or the Center Director;
- (b) Assisting the Teacher in planning and initiating appropriate daily activities, which promote positive development and learning based on the strengths, interests, and needs of all of the children in his or her class or group;
- (c) Assisting the Teacher in communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their children; and
- (d) Participating in on-going in-service training and continuing education requirements, as required.

- 166.4 A private, parochial, or independent school is exempt from complying with the requirements of this section, if the school:
- (a) Is an elementary/secondary educational program, as defined in this chapter;
 - (b) Cares for infants and toddlers on the same premises as the instructional program offered to school-age children;
 - (c) Is accredited by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE; and
 - (d) Does not offer subsidized child care.

167 CHILD DEVELOPMENT HOME: ADDITIONAL REQUIREMENTS

- 167.1 A licensed Child Development Home shall provide a child development program for up to a total of six (6) children.
- 167.2 For the purposes of Sections 167 through 171, the term "Licensee" specifically refers to the Caregiver of a licensed Child Development Home.
- 167.3 A Licensee shall live on the premises and work at the Facility located in the home.
- 167.4 A Licensee shall be responsible for compliance with all District of Columbia laws and regulations applicable to a Child Development Facility, including all sections in this chapter, except those specifically applicable only to Child Development Centers.
- 167.5 A Child Development Home may be licensed to provide care for up to six (6) children. The total number of six (6) children in the care of a Child Development Home shall not include those of the caregiver who are six (6) years or older; provided, that the total number of children of the caregiver between the ages of six (6) and fifteen (15) years shall not exceed three (3), and of those three (3) children, no more than two (2) shall be age ten (10) years or younger. The restrictions on the number of children that may be cared for in a child development home shall also include care given to a child by a caregiver related to the child. For the purpose of this paragraph, the term "related" means any of the following relationships by marriage, blood, or adoption: Grandparent, parent, brother, sister, step-sister, step-brother, uncle, or aunt.
- 167.6 A Licensee who stores, prepares, handles and serves food shall be responsible for following the requirements consistent with the District of Columbia Municipal Regulations, including obtaining all requisite certifications or licenses as required under the applicable laws and regulations of the District of Columbia.

- 167.7 Notwithstanding Subsection 142.7, a Licensee shall ensure that licensed firearm, shotguns, rifles or other licensed weapons and ammunition are inaccessible to children served in a Child Development Home or Expanded Home, unloaded, secured with an appropriate trigger locking device, and stored in a safe storage depository which, when locked, is incapable of being opened without the key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon or ammunition contained therein. Ammunition shall also be stored in a safe storage depository.
- 167.8 A Licensee shall ensure that parent(s) or guardian(s) of children served in a Child Development Home or Expanded Home with licensed firearm, shotguns, rifles or other licensed weapons and ammunition are provided notice that a licensed firearm, shotguns, rifles or other licensed weapons and ammunition are on the premises of the Child Development Home or Expanded Home.
- 167.9 A licensed Child Development Home or Expanded Home shall not provide foster care, for either children or adults, on the same premises, without the prior written approval from OSSE. This written approval shall be maintained at the Facility at all times that the caregiver provides foster care.
- 167.10 A licensed Child Development Home shall obtain, maintain, and provide to OSSE upon request, documentation establishing that each person living at the home that houses the Facility has, within the preceding twelve (12) months, been examined by a licensed health care professional and certified by that professional to be free of communicable diseases.
- 167.11 Child Development Homes and Expanded Homes shall obtain approval from OSSE for the use of all program space, and may only offer child care in approved space.
- 167.12 The Caregiver(s) of a Child Development Home or Expanded Home shall arrange the play space and the furniture in the approved program space within the Child Development Home or Expanded Home to allow adequate room for active and quiet play and for individual and group activities.
- 167.13 Program space does not include:
- (a) Food preparation areas within the kitchen;
 - (b) Bathrooms;
 - (c) Hallways;
 - (d) Stairways;

- (e) Closets;
- (f) Laundry rooms or areas;
- (g) Furnace rooms; and
- (h) Storage spaces.

167.14 Child Development Homes and Expanded Homes shall provide a sufficient amount, as determined by OSSE, of developmentally appropriate toys, games, equipment, books, and other materials to meet the needs of enrolled children at the Facility.

167.15 Child Development Homes and Expanded Homes serving infants, toddlers, or preschoolers shall provide suitable age-appropriate outdoor play space. This play space shall be at:

- (a) An enclosed yard on the Facility premises;
- (b) A nearby park or playground; or
- (c) A rooftop play space that meets the requirements of this chapter.

167.16 Child Development Homes and Expanded Homes shall provide a minimum of sixty square feet (60 ft²) of outdoor play space per child, based on the maximum number of children scheduled to play outdoors at any one time.

168 CHILD DEVELOPMENT HOME: CAREGIVER QUALIFICATIONS AND RESPONSIBILITIES

168.1 A Child Development Home Caregiver shall be at least eighteen (18) years of age and shall:

- (a) Have earned a high school diploma or its equivalent; and shall earn a Child Development Associate (CDA) credential within two (2) years of the effective date of these regulations;
- (b) Attend at least four (4) child development-related training courses, approved by the District of Columbia Government, per year, for a total of at least twelve (12) hours of professional development annually; and
- (c) Successfully complete all health and safety training requirements set forth in this chapter.

168.2 The duties of a Child Development Home Caregiver shall include, but shall not be

limited to, the following:

- (a) Orienting each member of the Caregiver's household to the laws, regulations, and standards governing Child Development Homes;
- (b) Operating the Child Development Home in compliance with all applicable laws and regulations, including compliance with background check requirements for Caregivers and any adult living in the household;
- (c) Ensuring that enrolled children are supervised and within sight and sound at all times;
- (d) Ensure that any other duties or activities performed on behalf of the household do not interfere with the supervision and care given to the enrolled children;
- (e) Ensuring that each person residing at the home has a physical examination by a licensed health care practitioner at least annually and that each is certified by the examining practitioner to be free of tuberculosis and other diseases in communicable form;
- (f) Supervising and accompanying all visitors who are present at the Home or on the grounds during the Child Development Home's hours of operation;
- (g) Reporting to OSSE and to the parent(s) or guardian(s) of each affected child any unusual incident or accident that occurs in the Child Development Home, in accordance with this chapter;
- (h) Ensuring that an adequate number of qualified registered back-up personnel, are engaged by the Child Development Home and are available to be present at the Child Development Home when needed, at all times during the Child Development Home's hours of operation, in accordance with this chapter; and that all the qualifications and training of back-up personnel be documented, and that this documentation, along with records related to back-up personnel, be kept current and maintained consistent with the standards set forth in this section, as required for all Child Development Home Caregivers;
- (i) Developing and implementing written contingency plans, including written instructions for all Child Development Home personnel and for all responsible household members, for use in case of medical and non-medical emergencies;
- (j) Being responsible for the overall supervision and administration of the program of care provided to the enrolled children; and

- (k) Ensuring that staff members have access to ongoing professional development through registration in the District of Columbia's Early Learning Professional Development Information System.
- 168.3 Child Development Home Caregivers shall be physically present at the Facility during the Facility's hours of operation and maintain, on the premises, a record of days and actual hours at work at the Facility.
- 168.4 When the Child Development Home Caregiver is not physically present at the Facility due to Caregiver's attendance at a professional development event or performance of other Caregiver related responsibilities, the Child Development Home Caregiver shall designate a qualified back-up Caregiver, who meets the requirements and qualifications of a Caregiver as set forth in Section 168.1(a) and (c) and criminal background checks as set forth in Section 133, , to assume full responsibility for the Facility's operations in the absence of the Child Development Home Caregiver.
- 168.5 Child Development Home Caregivers shall ensure that qualified back-up personnel are available during all hours of the Facility's hours of operation and that the engagement of back-up personnel does not create a violation of this chapter. If a Child Development Home Caregiver utilizes another licensed Child Development Home Caregiver as a back-up, the back-up site shall not be responsible for more children than indicated on his or her license.
- 168.6 Child Development Home Caregivers shall ensure that the written contingency plan is applicable for all hours of the day, days of the week, and weeks of the year for which the Child Development Home is normally operating. If the written contingency plan utilizes a location that is not available for all days or hours for which the Child Development Home is normally operating, the written contingency plan shall identify a secondary emergency location that is available.

169 EXPANDED CHILD DEVELOPMENT HOME: ADDITIONAL REQUIREMENTS

- 169.1 An Expanded Home may be licensed to provide care for up to twelve (12) children, consistent with the laws and regulations of the District of Columbia. An Expanded Home shall comply with the Day Care Policy Act of 1979, effective September 19, 1979 (D.C. Law 3-16; D.C. Official Code §§ 4-401 *et seq.*).
- 169.2 An Expanded Home may provide care for more than two (2) children who are non-ambulatory or under two (2) years of age, provided that the number of such children does not exceed the following:
- (a) Four (4) children, if there are two (2) or more Caregivers present; or
 - (b) Six (6) children, if there are three (3) or more Caregivers present.

169.3 Expanded Homes shall comply with all of the requirements of this chapter pertaining to Child Development Facilities and Child Development Homes, with the following additional requirements:

- (a) Each Expanded Home shall have at least two (2) Caregivers, in compliance with adult-to-child care ratios; and
- (b) Each Expanded Home shall provide a minimum of thirty-five square feet (35 ft²) of unencumbered program space per child.

170 EXPANDED CHILD DEVELOPMENT HOME: CAREGIVER QUALIFICATIONS AND RESPONSIBILITIES

170.1 Expanded Home Caregivers shall comply with the requirements for Caregivers in Child Development Homes contained in this chapter, except as specifically provided herein.

170.2 An Expanded Home Caregiver shall be at least eighteen (18) years of age and shall:

- (a) Have earned at least one of the following:
 - (1) An associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in early childhood education, early childhood development, child and family studies or a closely related field; or
 - (2) A high school diploma or its equivalent, and a current Child Development Associate (CDA) credential; provided that he or she earns an associate's or more advanced degree as described in Subsection 170.2(a)(1) within three (3) years of the effective date of these regulations.
- (b) Have successfully completed one of the following:
 - (1) At least one (1) year of operating as the Caregiver in a licensed District of Columbia Child Development Home or its equivalent in another jurisdiction; or
 - (2) At least one (1) year of supervised occupational experience in a licensed Child Development Center, or its equivalent in another jurisdiction, as a Center Director or Teacher.

170.3 A primary Caregiver shall reside in the dwelling where the licensed Expanded

Home is located.

171 EXPANDED CHILD DEVELOPMENT HOME: ASSOCIATE CAREGIVER QUALIFICATIONS AND RESPONSIBILITIES

171.1 An Associate Caregiver in an Expanded Home shall be at least eighteen (18) years of age and shall:

(a) Have earned a high school diploma or its equivalent, and a current CDA credential, except that an Associate Caregiver currently working in a licensed expanded home on the effective date of these regulations shall have two (2) years from that date within which to obtain the CDA credential; and

(b) Have successfully completed at least one of the following:

(1) At least one (1) year of operating as the Caregiver in a District of Columbia licensed Child Development Home, or its equivalent in another jurisdiction; or

(2) At least one year of supervised occupational experience in a District of Columbia licensed Child Development Center, or its equivalent in another jurisdiction, as a Center Director, Teacher, or Assistant Teacher.

171.2 An Associate Caregiver need not reside in the dwelling where the licensed Expanded Home is located.

172 OUT-OF-SCHOOL-TIME PROGRAM: ADDITIONAL REQUIREMENTS

172.1 In the case of a Facility providing out-of-school-time care only, which is located in a District of Columbia government building exempt from Certificate of Occupancy requirements, the requirements of this chapter may be met by providing, in lieu of the Certificate of Occupancy, a Building Use Agreement executed by the Facility and the District of Columbia government agency with responsibility for that building, including a certification from the government agency that it assumes responsibility for the maintenance and safety of the premises in which the Facility is located.

172.2 The space used by an out-of-school-time program must comply with the requirements in Section 163 (Child Development Center: Indoor and Outdoor Program Space) which sets forth indoor and outdoor program space requirements for child development centers. A licensed out-of-school-time program is exempt from the specific indoor space requirements set forth in Section 122.1 and need only maintain a minimum of twenty-five (25) square feet of program space per child five (5) years old or older.

- 172.3 Child Development Facilities providing out-of-school-time care to school-age children shall provide at least one (1) flush toilet and one (1) sink for every twenty (20) children, based on the licensing capacity of the Facility.
- 172.4 Except as provided in Subsection 172.5, if a Facility provides out-of-school-time care to school-age children, the Licensee shall develop a program of supervised activities that is designed for school-age children that includes for each child:
- (a) Free choice of play with appropriate toys;
 - (b) Opportunities to further develop and strengthen motor proficiencies including running, jumping, and climbing;
 - (c) Opportunities for concentration, alone or in a group;
 - (d) Time to read or do homework;
 - (e) Opportunities for creative activities; and
 - (f) Opportunities for developing supportive relationships with staff, volunteers, and peers.
- 172.5 If a Licensee provides out-of-school-time care, the Licensee need not comply with the requirements of Subsection 172.4, provided that the Licensee satisfies the specific program requirements in Section 140 (General Daily Program Activities and Curriculum).
- 172.6 In out-of-school time programs, each group containing one (1) or more children eleven (11) years of age or younger shall be supervised by, at a minimum, a Group Leader and an Assistant Group Leader. A group containing children all of whom are twelve (12) years of age or older may be occasionally supervised by a volunteer, in addition to the Group Leader, provided that the volunteer is at least two (2) years older than the oldest child in the group.
- 172.7 A Licensee that provides out-of-school-time care to school-age children may permit a child seven (7) years or older to administer his or her own medication or treatment, under the direct supervision of a staff member, upon receipt of written authorization for the child's self-administration from the child's parent(s) or guardian(s).
- 172.8 A Licensee that provides out-of-school-time care to school-age children may permit a school-age child with asthma to carry his or her own inhaler and to self-administer medication from it as needed, and may permit a child with a chronic illness or disability to self-test for the appropriate medical indicator(s) and to self-administer medication as needed, upon receipt of written authorization from the

child's licensed health care practitioner and written consent from the child's parent(s) or guardian(s). In each such case, the Licensee shall ensure that all staff members are informed of the fact that the child is permitted to self-test or to self-administer his or her medication.

173 OUT-OF-SCHOOL TIME PROGRAM: CENTER DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES

173.1 A licensed Child Development Center that provides out-of-school-time care, either exclusively or in connection with infant, toddler, or preschool care, shall have a Center Director.

173.2 A Center Director for a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, or preschoolers shall meet the qualification requirements for a Center Director in accordance with Section 164 (Child Development Center: Director Qualifications and Responsibilities).

173.3 A Center Director for a Child Development Center that only provides out-of-school-time care shall be at least eighteen (18) years of age and shall either:

- (a) Have earned a bachelor's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in education, child and positive youth development, or early special education;
- (b) Have earned a bachelor's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, and have at least one (1) year of supervised occupational experience working with school age children under the age of fifteen (15) years in a duly authorized school or camp, a licensed Child Development Center, or the equivalent; or
- (c) Have earned an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in education or child and positive youth development, and have at least one (1) year of supervised occupational experience working with school age children under the age of fifteen (15) years in a duly authorized school or camp, a licensed Child Development Center, or the equivalent.

173.4 For the purposes of Subsection 173.3, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

- 173.5 A Center Director of an out-of-school-time program shall be responsible for the supervision, program planning, and administration of the Child Development Center and its staff, consistent with its written operational policies and philosophy, and shall assume the following responsibilities:
- (a) Ensuring compliance with the requirements of this chapter, and with all applicable Federal and District of Columbia laws;
 - (b) Selecting and supervising qualified staff and volunteers in accordance with the District of Columbia Career Guide for Early Childhood and Out-of-School-Time Professionals;
 - (c) Implementing an initial orientation and annual training for each staff member and volunteer, as required;
 - (d) Ensuring that adult-to-child ratios are maintained in compliance with this chapter at all times;
 - (e) Ensuring that parents or guardians continuously have an opportunity to be involved in the program and in the activities of the Center;
 - (f) Reporting unusual incidents as defined by and in accordance with this chapter;
 - (g) Ensuring that all staff members maintain current First Aid and Cardiopulmonary Resuscitation certification for children are present at the Facility premises at all times;
 - (h) Participating in on-going in-service training and continuing education requirements, as required;
 - (i) Reporting evidence of child abuse and neglect that comes to the Facility staff's attention, in accordance with this chapter;
 - (j) Supervising curriculum implementation at the Center; and
 - (k) Ensuring that staff members have access to ongoing professional development through registration in the District of Columbia's Early Learning Professional Development Information System.

174 OUT-OF-SCHOOL TIME PROGRAM: GROUP LEADER QUALIFICATIONS AND RESPONSIBILITIES

- 174.1 At a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, and/or preschoolers, a qualified Teacher shall be

deemed to meet the qualification requirements for a Group Leader.

174.2 A Group Leader, whose sole responsibility is to supervise an out-of-school-time program group, shall be at least eighteen (18) years of age and shall either:

- (a) Have earned, an associate's or more advanced degree from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, with a major in education or child and youth development;
- (b) Have earned at least forty-eight (48) semester credit hours, or its recognized equivalent, from an institution accredited by an agency recognized by the U.S. Secretary of Education or the Council for Higher Education Accreditation, of which at least nine (9) semester credit hours, or its recognized equivalent, shall be in child and youth development, and have at least six (6) months of supervised occupational experience working with school age children under the age of fifteen (15) years at a duly authorized school or camp, a licensed Child Development Center, or the equivalent;
- (c) Have earned a high school diploma or its equivalent, and have at least one (1) year of supervised occupational experience working with school age children under the age of fifteen (15) years at a duly authorized school or camp, a licensed Child Development Center, or the equivalent.

174.3 In order to qualify for the purpose of Subsection 174.2, a period of supervised occupational work experience shall include an average of no less than twenty (20) hours per week. One (1) year of occupational experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

174.4 The duties and responsibilities of a Group Leader shall include, but not be limited to, the following:

- (a) Supervising, assisting, and guiding the children in his or her assigned group;
- (b) Assisting the Center Director in appropriately planning the program of care and education;
- (c) Communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their child(ren); and
- (d) Supervising subordinate staff.

175 OUT-OF-SCHOOL-TIME PROGRAM: ASSISTANT GROUP LEADER

QUALIFICATIONS AND RESPONSIBILITIES

- 175.1 In a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, or preschoolers, a qualified Assistant Teacher shall be deemed to meet the qualification requirements for an Assistant Group Leader.
- 175.2 An Assistant Group Leader in a Child Development Center that provides out-of-school-time care only shall be at least eighteen (18) years of age and have earned at least a high school diploma or its equivalent, and have at least six (6) months of supervised occupational experience working with school-age children of under the age of fifteen (15) years at a duly authorized school or camp, licensed Child Development Center, or an equivalent entity.
- 175.3 For the purposes of this section, a period of supervised occupational experience shall include an average of no less than twenty (20) hours per week. Six (6) months occupational experience is equal to five hundred (500) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.
- 175.4 Each Assistant Group Leader shall work under the direct supervision of a Group Leader.
- 175.5 The duties and responsibilities of an Assistant Group Leader shall be to aid the Group Leader in guiding the activities of the children.

176 OUT-OF-SCHOOL TIME PROGRAM: PROFESSIONAL DEVELOPMENT REQUIREMENTS FOR STAFF

- 176.1 Each paid employee at a Child Development Facility serving infants, toddlers, or preschoolers whose duties or responsibilities include the care of enrolled children shall receive pre-service training in the health and safety standards of licensed Child Development Facilities in the District of Columbia that, at a minimum, shall include
- (a) Child abuse and neglect, prevention, detection and reporting;
 - (b) Emergency preparation and response planning for emergencies resulting from a natural disaster or a human-caused event;
 - (c) Prevention of sudden infant death syndrome and use of safe sleep practices;
 - (d) Prevention of shaken baby syndrome and abusive head trauma;
 - (e) First aid and CPR, as applicable;
 - (f) Prevention and control of infectious diseases, including immunization;

- (g) Administration of medication, consistent with standards for parental or guardian consent;
- (h) Prevention of and response to emergencies due to food and allergic reactions;
- (i) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
- (j) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants.

176.2 Each paid employee at a licensed Child Development Facility providing out-of-school-time care whose duties or responsibilities include solely the care of school-aged children shall participate in at least ten (10) hours of professional development annually, including annual training that maintains and updates the employee's knowledge of health and safety standards.

176.3 Acceptable subject for professional development of employees who work with school age children may include the topics specified in Subsection 139.7, plus the following additional areas as appropriate for the age range of the children served by the Facility:

- (a) Recreation;
- (b) Science and technology;
- (c) Music, visual, and performing arts;
- (d) Youth development; and
- (e) Guidance.

199 DEFINITIONS

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

Abuse – The physical or mental injury of a child by a parent, guardian, or custodian, under circumstances that indicate that the child's health or welfare is significantly harmed or at risk of being significantly harmed. Abuse includes sexual abuse of a child, whether or not physical injuries are sustained.

Adult – A person who is eighteen (18) years of age or older.

Adult-to-child ratio – The maximum number of children permitted per staff member.

Americans with Disabilities Act or "ADA" – approved July 26, 1990, as amended (Pub.L. 101-336; 104 Stat. 327; 42 U.S.C. §§ 12101 *et seq.*).

Associate caregiver – An individual who provides care in an Expanded Child Development Home and who is subordinate to the Primary Caregiver.

Building use agreement – An agreement between the Child Development Facility licensed or required to be licensed and the owner of a building to use the building to operate a Child Development Facility if the primary location of operation ceases to be available.

CDA -- Child Development Associate credential, a credential obtained under the award system of the Council for Professional Recognition.

CPR – Cardiopulmonary resuscitation.

Care by a related person – Care of a child by that child's parent, step-parent, grandparent, brother, sister, step-brother, step-sister, uncle, or aunt, said relationship having been established by blood, marriage, or adoption, or by that child's legal guardian.

Caregiver – An individual who is in charge of, and responsible for the direct care, supervision, and guidance of children in a Child Development Home or Expanded Child Development Home.

Center director – A Child Development Center staff member who has primary responsibility for the daily operations and management of the Center, which may serve children from birth to kindergarten entry and children in school-age child care.

Change in ownership – Any change that results in an individual or owner (including a corporation or unincorporated business entity) acquiring the ability to substantially affect the actions of the Facility. An individual or corporation has the ability to substantially affect the Facility's actions when he, she, or it (1) personally holds, or holds in partnership with one or more family members, at least a twenty-five percent (25%) ownership interest in the Facility; or (2) personally represents (with voting trust, power of attorney, or proxy authority), or represents in partnership with one or more family members, any individual or group holding at least a twenty-five percent (25%) ownership interest in the Facility.

Child or children – An individual or individuals from birth to fifteen (15) years of age, except when “infant/s” and/or “toddler/s” are specified within the same provision, in which case “child” or “children” means an individual or individuals from thirty-six (36) months old to fifteen (15) years of age.

Child experiencing homelessness – A child who is homeless as defined in Section 725 of Subtitle Vii-B of the McKinney-Vento Act (42 U.S.C. § 11434a).

Child development center or Center – A Child Development Facility located in premises other than a dwelling occupied by the operator of the Facility that serves more than twelve (12) children. This definition encompasses facilities generally known as child care centers, preschools, nursery schools, before-and-after school programs, and similar programs and facilities.

Child development facility or Facility – A center, home, expanded home, or other structure that provides care and other services, supervision and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name. Child Development Facility does not include a public or private elementary or secondary school engaged in legally required educational and related functions or a pre-kindergarten education program licensed pursuant to the Pre-k Act.

Child development home – A private residence which provides a child development program for children. Child Development Home also includes those Facilities classified as “Expanded Child Development Homes”.

Communicable diseases – A disease identified as a communicable disease, including without limitation any illness due to an infectious agent or its toxic product, which is transmitted directly or indirectly to a well person from an infected person, animal, or ectoparasite; or any illness due to an infectious agent or its toxic product which is transmitted through the agency of an intermediate host, vector, or by exposure within the immediate environment. Communicable disease also shall mean any disease occurring as an outbreak of illness or toxic conditions, regardless of etiology in an institution or other identifiable group of people.

CYSHA – Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 1-620.31 *et seq.* (2012 Repl. & 2016 Supp.)).

Developmentally appropriate – Individualized, responsive care that aligns with a child’s age, needs, cultural context, and personality.

DOEE – District of Columbia Department of Energy and Environment.

Elementary/secondary educational program – A course of instruction and study from and including pre-Kindergarten through the end of high school, any portion thereof, or its equivalent.

Encumbered Instructional and/or Play Space – Space that is restricted by permanent fixtures, architectural structures, equipment, bedding, or furniture that are unrelated to the program.

Expanded child development home – A Child Development Home in which child care is provided by two (2) or more Caregivers for up to twelve (12) children.

Facilities Act – The Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code §§ 7-2031 *et seq.*).

Facility – A Child Development Facility.

Fever – A temperature of one hundred degrees Fahrenheit (100° F) or higher if taken under the arm, one hundred and one degrees Fahrenheit (101 °F) if taken orally, or one hundred and two degrees Fahrenheit (102 °F) if taken rectally. For children under the age of four (4) months, a fever is a temperature of one hundred and one degrees Fahrenheit (101°F) or higher taken by any method.

Full School Day – The entirety of the instructional hours regularly provided on a single school day.

Guardian – A person, other than the child’s parent, who has been granted legal authority over and responsibility for a child.

Group size – The number of children occupying an individual classroom or well-defined space within a larger room

IEP – Individualized Education Program.

IFSP – Individualized Family Service Plan.

Infant – An individual birth to twelve (12) months of age.

Licensed health care practitioner – A Physician, a Nurse-Practitioner (also known as an Advanced Practice Registered Nurse), or a Physician’s

Assistant licensed to practice health care by the D.C. Board of Medicine or Board of Nursing, or by a comparable body in another state.

Licensee – A Child Development Facility licensed pursuant to this chapter, or the operator of such a Facility, including the Center Director or Caregiver of a Home or Expanded home.

Nanny share – An arrangement in which two or more families are splitting the services of a nanny under these circumstances: The nanny may work part-time for one family caring for the child(ren) in their own home then work part-time for the other family caring for that family's child(ren) in their home.

Neglect – The failure to provide care, services and supervision necessary to avoid physical harm or mental anguish.

Non-ambulatory child – A child who is: (1) unable to leave a building under emergency conditions without assistance; (2) unable to walk forward or backward without assistance; (3) unable to go up or down steps without assistance; or (4) dependent upon mechanical aids such as crutches, walkers or wheelchairs.

Non-peak hours – For programs operating during traditional daytime hours, before 9:00 a.m. and after 4:00 p.m.; and for programs operating outside of traditional daytime hours, time periods as specified in writing to, and accepted by, OSSE.

OAH – The Office of Administrative Hearings.

OAH Act – Office of Administrative Hearings Establishment Act of 2002, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*).

Office of the State Superintendent or OSSE – The office established by Section 2 of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601).

Out-of-school-time care – Care and other services, supervision and guidance provided to one or more children of legal school age and under the age of fifteen (15) years, who are enrolled in public, private, or charter schools, before and after normal school hours at a Child Development Facility.

Parent – A legal mother or father of a child, by blood, adoption, foster care placement, or appointment as legal guardian or custodian of that child by a court of competent jurisdiction.

Peak hours – For programs operating during traditional daytime hours, the hours between 9:00 a.m. until 4:00 p.m.; and for programs operating outside of traditional daytime hours, time periods as specified in writing to, and accepted by, OSSE.

Person – A corporation, partnership, and government as well as an individual.

Premises – Land and any structure, building or improvement, or any portion thereof, operated by a Child Development Facility licensed by OSSE to provide care and other services, supervision and guidance for children, infants, and toddlers on a regular basis. The term includes, but is not limited to, all land, structures or buildings used for educational functions and all land, structures, buildings, or other improvements used for accessory uses normally incidental to provide care and other services, supervision and guidance for children, infants, and toddlers on a regular basis, including but not restricted to indoor and outdoor areas, field houses, gymnasiums, parking lots, greenhouses, playgrounds, stadiums, and open space.

Preschool or preschooler – A child thirty-six (36) to sixty (60) months of age but younger than school age.

Pre-service training – Required training for paid employees of a Child Development Facility that shall take place prior to or within ninety (90) calendar days of providing service.

Pre-k Act – Pre-k Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code §§ 38-271.01 *et seq.*).

Pre-K age children – Children who are

- (a) Three (3) years of age on or before September 30 of the program year for which the child is being enrolled;
- (b) Four (4) years of age; or
- (c) Five (5) years of age after September 30 of the program year for which the child is being enrolled.

Pre-K education service – The purposeful, well planned and developmentally appropriate practice and instruction provided by community-based organizations to pre-K age children.

Primary caregiver – An individual who operates an Expanded Child Development Home and who is in charge of the day-to-day operations of the Home.

Related person – Any legal guardian or any of the following relationships established by marriage, adoption, or blood to the fifth (5th) degree: parent or step-parent; grandparent; brother, sister, step-sister, or step-brother; uncle or aunt; or niece or nephew.

Safety-sensitive position - Employment in which the employee has (1) direct contact with children and youth, (2) is entrusted with the direct care or custody of children and youth; and (3) whose performance of his or her duties may affect the health, welfare, or safety of children and youth, as defined in D.C. Official Code § 1-620.31(10) .

School-age child – A child who is between five (5) years of age and eighteen (18) years of age on or before September thirty (30) of the current school year.

Special needs – Conditions or characteristics of a person that reflect a need for particular care, services or treatment, most commonly physical and/or mental disabilities and/or delays and is evidence by IFSP or IEP.

Staff or staff member – An individual who provides child care or related services directly to a child on a person-to-person basis in a Child Development Facility, whether compensated or uncompensated. “Staff” includes a Center Director, teachers, assistant teachers, caregiver, assistant care giver.

Subsidized child care – Part-time or full-time child care services, subsidized in whole or in part to eligible families pursuant to local and federal law, including but not limited to Sections 5a and 6 of the Day Care Policy Amendment Act of 1998, effective April 13, 1999 (D.C. Law 12-216; D.C. Official Code §§ 4-404.01 and 4-405), and the Child Care and Development Block Grant Act of 2014, approved November 19, 2014 (Pub. L. 113-186; 128 Stat. 1971).

Toddler – A child twelve (12) months to thirty-six (36) months of age.

Unencumbered Instructional or Play Space – Space that is free of permanent fixtures, architectural structures, equipment, bedding, and furniture that are unrelated to the program

Unusual incident – Any accident, injury, or other extraordinary event that involves a child in care, a staff member, or the operation of a Child Development Facility, including suspected child maltreatment or abuse.

Volunteer – A person rendering services to a Child Development Facility without compensation by the Facility, including a person so rendering services as part of an internship or otherwise under the auspices of an educational or

training program. Volunteer does not include a chaperone providing service for a field trip, party or special event.

Chapter 3, CHILD DEVELOPMENT FACILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Delete Sections 300 through 379 in their entirety.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in the District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2014 Repl.)), hereby gives notice of the adoption of amendments to Chapter 8 (Tabulation and Certification of Election Results) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The amendments establish that write-in votes will only be tabulated in contests where an individual has timely filed an Affirmation of Write-in Candidacy, and there is either no candidate printed on the ballot in order to determine a winner, or the total number of write-in votes reported is sufficient to elect a write-in candidate. The amendment to the "Recount Procedures" section determines the procedures and rules for conducting a recount.

A Notice of Proposed Rulemaking with respect to these amendments was published in the *D.C. Register* on September 30, 2016 at 63 DCR 011895. No comments on the proposed rules were received during the public comment period, and no substantive changes have been made to the regulations as proposed.

The rules were adopted as final at a Regular Board meeting on Friday, November 18, 2016 and they will become effective upon publication of this notice in the *D.C. Register*.

Chapter 8, TABULATION AND CERTIFICATION OF ELECTION RESULTS, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 806, TABULATION PROCEDURES, is amended in its entirety, to read as follows:

806 TABULATION PROCEDURES

- 806.1 The tabulation of votes shall be started immediately on Election Day after the close of polls, and shall be conducted under the direct supervision of the Executive Director or his or her designee.
- 806.2 Whenever votes are counted by machines, the Executive Director shall utilize personnel qualified to operate the system. Additional personnel may be employed to perform such tasks as may be deemed necessary by the Executive Director.
- 806.3 Only those persons authorized by the Board, including credentialed poll watchers and election observers, shall be admitted to the Counting Center while tabulation is in progress.
- 806.4 All valid ballots shall be counted by mechanical tabulation unless otherwise determined by the Executive Director.

- 806.5 Special Ballots, together with any damaged ballots received from the polling places, shall be tabulated separately at a time designated by the Executive Director.
- 806.6 The valid votes recorded on damaged ballots shall be reproduced on duplicate ballots, in the presence of watchers, with the original and the reproduced ballots marked for identification with corresponding serial numbers.
- 806.7 The reproduced duplicate ballots, which have converted the votes on the damaged ballots to a machine readable form, shall be tabulated by machine.
- 806.8 Federal write-in absentee ballots shall be reproduced and tabulated in the same manner as damaged ballots, in accordance with §§ 806.6 - 806.7.
- 806.9 A Special Ballot cast by a voter who votes in a precinct that does not serve the address listed on the Board's registration records shall not be counted.
- 806.10 A count of the number of ballots tallied for a precinct, ballots tallied by groups of precincts and city-wide, shall be accumulated.
- 806.11 The total of votes cast for each candidate whose name appears pre-printed on the ballot shall be calculated by precinct and city-wide.
- 806.12 The total number of write-in votes marked by voters shall be reported for each contest.
- 806.13 The total number of votes cast for each write-in nominee shall be calculated only in contests where at least one individual has timely filed an Affirmation of Write-in Candidacy in accordance with Section 602 of this title, and:
- (a) There is no candidate printed on the ballot in order to determine a winner, or;
 - (b) The total number of write-in votes reported, under § 806.12, is sufficient to elect a write-in candidate.
- 806.14 Following tabulation of all ballots, a consolidated report shall be produced showing the total votes cast and counted for all offices and ballot questions. Unless otherwise mandated by the Board, the consolidated ballot report shall be made by precinct.

Section 815, PETITIONS FOR RECOUNT, RECOUNT DEPOSITS, AND REFUNDS OF RECOUNT DEPOSITS, is amended in its entirety, to read as follows:

815 PETITIONS FOR RECOUNT, RECOUNT DEPOSITS, AND REFUNDS OF RECOUNT DEPOSITS

- 815.1 Any qualified candidate in any election may, within seven (7) days after the Board certifies the election results, petition the Board for a recount of the ballots cast in that election. Such petition shall be in writing and shall specify the precincts in which the recount shall be conducted.
- 815.2 Upon receipt of a recount petition, the Board shall prepare an estimate of:
- (a) The costs to perform the recount; and
 - (b) The number of hours to complete the recount.
- 815.3 If the petitioner chooses to proceed, the petitioner shall deposit fifty dollars (\$50.00) for each precinct included in the recount within seven (7) days of receipt of the estimate of the cost of the recount and the hours required to complete the recount.
- 815.4 Deposits shall be paid by certified check or money order made payable to the order of the "D.C. Treasurer." No cash will be accepted.
- 815.5 The petitioner shall not be required to make a deposit for or pay the cost of any recount in any election where the difference between the number of votes received by the petitioner and the number of votes received by the person certified as having been elected to that office is:
- (a) In the case of a ward-wide contest, less than one percent (1%) of the total valid ballots cast in the contest or less than fifty (50) votes, whichever is less; or
 - (b) In the case of an at-large contest, less than one percent (1%) of the total valid ballots cast in the contest or less than three hundred fifty (350) votes, whichever is less; and
 - (c) In the case of an Advisory Neighborhood Commission Single-Member District contest, less than ten (10) votes.
- 815.6 If the recount changes the result of the election, the entire amount deposited by the petitioner shall be refunded.
- 815.7 If the result of the election is not changed, the petitioner is liable for the actual cost of the recount, minus the deposit already made.
- 815.8 If the results of the election are not changed as a result of the recount, but the cost of the recount was less than fifty dollars (\$50.00) per precinct, the difference shall be refunded to the petitioner.

815.9 A candidate may, at any time, request in writing that the recount be terminated and the Board shall refund the deposit remaining for any uncounted precincts.

Section 816, RECOUNT PROCEDURES, is amended in its entirety to read as follows:

816 RECOUNT PROCEDURES

816.1 The Executive Director shall conduct recount proceedings in accordance with provisions of this section.

816.2 The validity of ballots and votes recounted shall be determined pursuant to the provisions of this chapter.

816.3 Manual tabulation of votes in a recount proceeding shall be conducted in accordance with the provisions of this chapter.

816.4 Within two (2) days following the Board's determination to grant a recount petition or a court order directing the Board to conduct a recount, notice of recount proceedings shall be delivered via email to all qualified candidates for the contest being recounted. Public notice of recount proceedings shall be posted on the Board's website at least twenty-four (24) hours in advance of the commencement of the recount.

816.5 Each candidate, or organizational group in support of or opposition to a ballot question, in a contest involved in a recount shall be permitted to have no more than two (2) poll watchers at all phases of the recount, regardless of whether the candidate properly applied for poll watcher credentials pursuant to § 706. Candidates may also observe all phases of the recount in addition to their assigned poll watchers.

816.6 Apart from the election officials necessary to conduct the recount, priority of access to the place where the recount will occur will first be given to the candidate, or organizational groups in support of or opposition to a ballot question, in the contest being recounted. Space permitting, poll watchers and election observers credentialed pursuant to § 706, then members of the public and media shall also be given access.

816.7 Recount officials shall re-run all official ballots through a tabulator and count only the votes for the office or ballot question at issue in the recount. All ballots which are not machine-readable shall be tabulated manually, pursuant to the rules provided in this chapter.

816.8 [REPEALED].

816.9 At the conclusion of the recount proceedings, a recount results report shall be presented to the Board and posted on the Board's website. The Board shall

determine the number of votes received by each candidate as a result of the recount, but shall not make a new certification of the results of the election unless the outcome of the contest has changed as a result of the recount.

- 816.10 There shall be only one (1) recount per contest.
- 816.11 Results of the recount are final and not appealable.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health (Director), pursuant to the authority set forth in § 201(a) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-902.01 (2014 Repl. & 2016 Supp.)), and Mayor's Order 98-49, dated April 15, 1998, hereby gives notice of the adoption of the following amendments to Chapter 12 (Controlled Substances Act Rules) of Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

The rules update the list of Schedules I, II, and IV drugs, and were adopted after considering the eight (8) factors set forth in Section 201(a) of the Act (D.C. Official Code § 48-902.01 (2014 Repl. & 2016 Supp.)).

A Notice of Emergency and Proposed Rulemaking was published on June 17, 2016 at 63 DCR 8543. No comments have been received in response to publication of the notice and no changes have been made since publication of the notice.

The Director adopted these rules as final on November 21, 2016. These rules will become effective upon publication of this notice in the *D.C. Register*.

Chapter 12, CONTROLLED SUBSTANCES ACT RULES, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended as follows:**Section 1201, SCHEDULE I ENUMERATED, is amended as follows:**

Subsection 1201.1(c) is amended by striking the word “and” at the end of paragraph (45) and adding new paragraphs to be numbered (47) through (226) as follows:

- (47) (2C-T) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine; OR 4-methylthio-2,5-dimethoxyphenethylamine;
- (48) 4- methylthio-2,5-dimethoxyphenethylamine;
- (49) (2C-B-butterFLY) 2-(10-Bromo-2,3,4,7,8,9 hexahydropyrano[2,3-g]chromen-5-yl)ethanamine;
- (50) (2C-B-FLY) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4- yl)ethanamine;
- (51) (2C-B-hemiFLY, 2CB-5- hemiFLY) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4- yl)ethanamine;
- (52) (2C-B-FLY-NBOMe) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7- tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane;
- (53) (2C-B-NBOMe, 2,5B-NBOMe) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine;

- OR 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine
- (54) 2CBCB-NBOMe N-(2-methoxybenzyl)-1-[(7R)-3-bromo-2,5-dimethoxybicyclo[4.2.0]octa-1,3,5-trien-7-yl]methanamine;
- (55) 2C-C-NBOMe, 2,5C-NBOMe 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine; OR 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;
- (56) 2C-H-NBOMe, 2,5H-NBOMe 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine;
- (57) 2C-I-NBOH, 2,5I-NBOH N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine;
- (58) 2C-I-NBOMe, 2,5INBOMe, 2,5I-NBOMe, 25I-NBOMe, NBOMe-2C-I, BOM-CI 2- 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine; OR 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;
- (59) (2CBCB-NBOMe) N-(2-methoxybenzyl)-1-[(7R)-3-bromo-2,5-dimethoxybicyclo[4.2.0]octa-1,3,5-trien-7-yl]methanamine
- (60) (2C-H-NBOMe, 2,5H-NBOMe) 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
- (61) (2C-I-NBOH, 2,5I-NBOH) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine;
- (62) 2C-TFM-NBOMe 2-(4-trifluoromethyl-2,5-dimethoxyphenyl)-N-[(2-ethoxyphenyl)methyl]ethanamine;
- (63) (25I-NBF) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-fluorophenyl)methyl]ethanamine;
- (64) (25I-NBMD, NBMD-2C-I, Cimbi-29) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2,3ethylenedioxyphenyl)methyl]ethanamine;
- (65) (3C-B-FLY) 2-(4-bromo-2,3,6,7-tetrahydrofurobensofuran-8-yl)-1- methyl-ethylamine;
- (66) (4-CAB, AEPCA) 4-Chlorophenylisobutylamine; OR 1-(4-chlorophenyl)butan-2-amine; OR 4-chloro- α -ethylphenethylamine;
- (67) (4-FA, PAL-303, Flux, Flits, R2D2) para-fluoroamphetamine; OR 4-fluoroamphetamine; OR (RS)-1-(4-Fluorophenyl)propan-

- 2-amine;
- (68) (5-APB) 5-(2-Aminopropyl)benzofuran;
- (69) (5-APDB) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran; 1-(2,3-dihydro-1-benzofuran-5-yl)propan-2-amine; 5-(2-Aminopropyl)-2,3-dihydrobenzofuran (3-Desoxy-MDA, EMA-4)
- (70) (6-APB; Benzofury) 6-(2-aminopropyl)benzofuran; OR 1-benzofuran-6-ylpropan-2-amine;
- (71) (6-APDB) 6-(2-Aminopropyl)-2,3,-dihydrobenzofuran;
- (72) (APB) ((2-aminopropyl)benzofuran); OR [(2-aminopropyl)benzofuran]; OR (2-aminopropyl)benzofuran;
- (73) (APDB) ((2-aminopropyl)-2,3-dihydrobenzofuran); OR [(2-aminopropyl)-2,3-dihydrobenzofuran]; OR (2-aminopropyl)-2,3-dihydrobenzofuran;
- (74) (bromo-dragonFLY) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine; OR bromo-benzodifuranyl-isopropylamine;
- (75) (DOB) 2,5-Dimethoxy-4-bromoamphetamine; OR 1-(4-Bromo-2,5- dimethoxyphenyl)-2-aminopropane;
- (76) (DOC) 2,5-Dimethoxy-4-chloroamphetamine; OR 1-(4-chloro-2,5- dimethoxy-phenyl)propan-2-amine; OR 4-chloro-2,5-dimethoxyamphetamine;
- (77) (DOI) 2,5-dimethoxy-4-iodoamphetamine; OR 1-(2,5-dimethoxy-4- iodophenyl)-propan-2-amine; OR 4-iodo-2,5-dimethoxyamphetamine;
- (78) DOM, STP 4-methyl-2,5-dimethoxy-amphetamine; OR 4-methyl-2,5-dimethoxy-a-methylphenethylamine;
- (79) (Fluoroamphetamine);
- (80) MDA 3,4-methylenedioxy amphetamine;
- (81) MDMA 3,4-methylenedioxymethamphetamine;
- (82) MDE, MDEA 3,4-methylenedioxy-N-ethylamphetamine; OR N-ethylalpha-methyl-3,4(methylenedioxy)phenethylamine;
- (83) Mescaline 3,4,5-trimethoxyphenethylamine;
- (84) (Mescaline-NBOMe) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine; OR 3,4,5-trimethoxy-N-(2-

- methoxybenzyl)phenethylamine;
- (85) (PMMA, 4-MMA) para-Methoxy-N-methylamphetamine; OR 4-methoxy-N-methylamphetamine; OR 1-(4-methoxyphenyl)-N-methyl-propan-2-amine;
- (86) TMA, 3,4,5-trimethoxyamphetamine;
- (87) 2,5-Dimethoxy-4-ethylamphetamine, (DOET, DOE);
- (88) Eticyclidine (PCE, CI-400);
- (89) N-Ethyl-mda; Eve (amphetamine); 3,4-Methylenedioxyethylamphetamine; 3,4-Methylenedioxy-N-ethylamphetamine;
- (90) 4-Methylthioamphetamine (4-MTA);
- (91) 2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, (2C-B-NBOMe);
- (92) 4-Methyl-2,5-dimethoxyphenethylamine, (2C-D);
- (93) 2-(4-Methyl-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, (2C-D-NBOMe);
- (94) 4-Ethyl-2,5-dimethoxyphenethylamine, (2C-E);
- (95) 2-5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)ethanamine, (2C-I-NBOMe);
- (96) 1-(Benzofuran-5-yl)-N-methylpropan-2-amine, (5-MAPB) (1-(benzofuran-5-yl)-N-methylpropan-2-amine);
- (97) N-Methyl-(6-bromo-3,4-methylenedioxyphenyl)propan-2-amine, (6-Br-MDMA);
- (98) 1-(6-chloro-1,3-benzodioxol-5-yl)-N-methylpropan-2-amine, 6-Chloro-MDMA (6-Cl-MDMA, 2-Cl-4,5-MDMA);
- (99) (AB-FUBINACA) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;
- (100) (ADB-PINACA) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide;
- (101) (ADBICA) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide;
- (102) (APICA) N-(1-adamantyl)-1-pentylindole-3-carboxamide;

- (103) (CUMYL-THPINACA) N-(2-Phenylpropan-2-yl)-1-(tetrahydropyran 4-ylmethyl)-1H-indazole-3-carboxamide;
- (104) (EAM-22001); (5"-fluoro-JWH-210) (1-(5-Fluoropentyl)-1H-indol-3-yl)(4-ethylnaphthalen-1-yl)methadone;
- (105) (FUB-JWH-018) (1-(4-Fluorobenzyl)-1H-indol-3-yl)(naphthalene-1-yl)methadone;
- (106) (FUB-PB-22); (UNII-DS46154N3F); (DS46154N3F) quinolin-8-yl 1-[(4-fluorophenyl)methyl]indole-3-carboxylate;
- (107) (MDMB-CHMICA) N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indole-3-carboxamide;
- (108) (MDMB-FUBINACA) N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;
- (109) (PX-2) N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide;
- (110) (2-FMC) 1-(2-fluorophenyl)-2-methylaminopropan-1-one;
- (111) (2-MMC) 1-(2-methylphenyl)-2-methylaminopropan-1-one;
- (112) (3,3-DMMC) 1-(3,4-dimethylphenyl)-2-methylaminopropan-1-one;
- (113) (3-CMC) 1-(3-chlorophenyl)-2-methylaminopropan-1-one;
- (114) (3-MeOMC) 1-(3-methoxyphenyl)aminopropan-1-one;
- (115) (3-MMC) 1-(3-methylphenyl)-2-methylaminopropan-1-one;
- (116) (4-BMC) 1-(4-bromophenyl)-2-methylaminopropan-1-one;
- (117) (4-CMC) 1-(4-chlorophenyl)-2-methylaminopropan-1-one;
- (118) (4-MMC) 4-methyl methcathinone or 4-methyl ephedrone;
- (119) (1-butyl-1H-indol-3-yl)(4-methylnaphthalen-1-yl)methanone;
- (120) [1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]-1-naphthalenyl-methanone;
- (121) 3-(4-methoxyphenyl)-2-methyl-1-[(2-(4-morpholinyl)ethyl)-1H-indol-3-yl]-methanone;
- (122) 2-(3-methoxyphenyl)-1-(1-pentyl-1H-indol-3-yl)-ethanone;

- (123) (2-iodophenyl)[1-[(1-methyl-2-piperidiny)methyl]-1H-indol-3-yl]-methanone;
- (124) [1-[(1-methyl-2-piperdiny)methyl]-1H-indol-3-yl]tricyclo[3.3.1.1^{3,7}]dec-1-yl-methanone;
- (125) 1-naphthalenyl(1-propyl-1H-indol-3-yl)-methanone;
- (126) 5-[3-(1-naphthoyl)-1H-indole-1-yl]pentanenitrile;
- (127) 3-(1-naphthenylmethyl)-1-pentyl-1H-indole;
- (128) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone;
- (129) 1-naphthalenyl[1-(4-penten-1-yl)-1H-indol-3-yl]-methanone;
- (130) (4-bromonaphthalen-1-yl)(1-pentyl-1H-indol-3-yl)methanone;
- (131) (4-fluoronaphthalen-1-yl)(1-pentyl-1H-indol-3-yl)methanone;
- (132) (2-methyl-1-phenyl-1H-indol-3-yl)-1-naphthalenyl-methanone;
- (133) 2-(2-chlorophenyl)-1-(1-pentyl-1H-indol-3-yl)-ethanone;
- (134) [1-(5-chloropentyl)-1H-indol-3-yl](2-iodophenyl)-methanone;
- (135) (adamantan-1-yl)(1-pentyl-1H-indol-3-yl)-methanone;
- (136) (2-iodo-5-nitrophenyl)-[1-(1-methylpiperidin-2-ylmethyl)-1H-indol-3-yl]-methanone;
- (137) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone;
- (138) [1-(5-fluoropentyl-1H-indol-3-yl)](2,2,3,3-tetramethylcyclopropyl)methanone;
- (139) [1-(2-morpholinoethyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone;
- (140) 1-[(tetrahydro-2H-pyran-4-yl)methyl]-1H-indol-3-yl-(2,2,3,3-tetramethylcyclopropyl)methanone;
- (141) 1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide;
- (142) 1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indazole-3-carboxamide;

- (143) 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide;
- (144) [1-(5-chloropentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone;
- (145) (1-isopentyl-1H-indol-3-yl)(naphthalen-1-yl)methanone;
- (146) 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indazole-3-carboxamide;
- (147) (1-pentyl-1H-indol-3-yl)(4-propyl-1-naphthalenyl)-methanone;
- (148) [1-(5-chloropentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone;
- (149) (4-methyl-naphthalen-1-yl)[1-(pent-4-en-1-yl)-1H-indol-3-yl]methanone;
- (150) (2-methoxy-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)methanone;
- (151) (3-methoxy-phenyl)(1-pentyl-1H-indol-3-yl)methanone;
- (152) [1-(5-fluoropentyl)-1H-indol-3-yl](4-ethyl-1-naphthalenyl)-methanone;
- (153) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate;
- (154) quinolin-8-yl 1-(5-fluoropentyl-1H-indole-3-carboxylate);
- (155) 1-(cyclohexylmethyl)-8-quinolinyl-ester-1H-indole-3-carboxylic acid;
- (156) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide;
- (157) 1-(5-fluoropentyl)-N-(naphthalene-1-yl)-1H-indole-3-carboxamide;
- (158) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;
- (159) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;
- (160) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide;
- (161) 2-iodophenyl(1-pentyl-1H-indol-3-yl)methanone;

- (162) [5-(2-methylphenyl)-1-pentyl-1H-pyrrol-3-yl]-1-naphthalenyl-methanone;
- (163) 1-pentyl-N-(naphthalene-1-yl)-1H-indole-3-carboxamide;
- (164) 1-(5-chloropentyl)-1H-indol-3-yl(4-methyl-1-naphthalenyl)-methanone;
- (165) (4-methyl-naphthalen-1-yl)[2-methyl-1-(pent-4-en-1-yl)-1H-indol-3-yl]methanone;
- (166) [1-(5-fluoropentyl)-1H-indol-3-yl](o-tolyl)methanone;
- (167) (2-ethylphenyl)(1-(5-fluoropentyl)-1H-indol-3-yl)methanone;
- (168) [1-(5-chloropentyl)-1H-indol-3-yl](naphthalen-1-yl)methanone;
- (169) [1-(5-bromopentyl)-1H-indol-3-yl](naphthalen-1-yl)methanone;
- (170) (1-(5-fluoropentyl)-1H-indazol-3-yl)(naphthalene-1-yl)methanone;
- (171) 1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl)methanone;
- (172) (1-(1-methylazepan-2-yl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone;
- (173) 4-hydroxy-3,3,4-trimethyl-1-(1-pentyl-1H-indol-3-yl)pentan-1-one;
- (174) [1-(4-fluoropentyl)-1H-indol-3-yl]-1-naphthenyl-methanone;
- (175) 2-(2-iodophenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone;
- (176) (1-hexyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone;
- (177) (2,2,3,3-tetramethylcyclopropyl)[1-(4,4,4-trifluorobutyl)-1H-indol-3-yl]methanone;
- (178) 7-methoxy-1-(2-morpholinoethyl)-N-((1S,4R)-1,3,3-trimethylbicyclo[2.2.1]heptan-2-yl)-1H-indole-3-carboxamide;
- (179) (4-fluorobenzyl)-1H-indole-3-quinolin-8-yl Carboxylate;

- (180) 1-(4-fluorobenzyl)-1H-indole-3-naphthalen-1-yl
Carboxylate;
- (181) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-
indazole-3-carboxamide;
- (182) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-
fluoropentyl)-1H-indole-3-carboxamide;
- (183) (1-(4-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-
tetramethylcyclopropyl)methanone;
- (184) 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)methanone;
- (185) N-naphthalenyl-1-pentyl-1H-indazole-3-carboxamide;
- (186) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-
1H-indazole-3-carboxamide;
- (187) naphthalene-1-yl(9-pentyl-9H-carbazol-3-yl)methanone;
- (188) naphthalene-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;
- (189) methyl 3-methyl-2-(1-pentyl-1H-indazole-3-carboxamido);
- (190) methyl 2-(1-5-fluoropentyl)-1H-indazole-3-caboxamido)
methylbutanoate;
- (191) N-benzyl-1-pentyl-1H-indole-3-carboxamide;
- (192) N-benzyl-1-(5-fluoropentyl)-1H-indole-3-carboxamide;
- (193) methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-
methylbutanoate;
- (194) quinolin-8-yl 1-pentyl-1H-indazole-3-carboxylate;
- (195) quinolin-8-yl 1-(5-fluoropentyl)-1H-indazole-3-carboxylate;
- (196) naphthalene-2-yl 1-(2-fluorophenyl)-1H-indazole-3-
carboxylate;
- (197) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-
(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- (198) (1-(4-flourobenzyl)-1H-indol-3-yl)(2,2,3,3-
tetramethylcyclopropyl)methanone;
- (199) N-(1-amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)-
1H-indole-3-carboxamide;

- (200) N-(1-amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide;
- (201) methyl (1-(cyclohexylmethyl)-1H-indazole-3-carbonyl-L-valinate);
- (202) N-[(1-(cyclohexylmethyl)-1H-indazole-3-yl)carbonyl]-3-methyl-L-valine, methyl ester;
- (203) methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate;
- (204) (1-(5-fluoropentyl)-1H-benzo[d]imidazole-2-yl)(naphthalene-1-yl)methanone;
- (205) (1-(4-fluorobenzyl)-1H-indol-3-yl)(naphthalene-1-yl)methanone;
- (206) methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate;
- (207) quinolin-8-yl-(4-fluorobenzyl)-1H-indazole-3-carboxylate;
- (208) N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;
- (209) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide;
- (210) 2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylheptyl-2-yl)phenol;
- (211) 3-hydroxy-2-[3-methyl-6-(1-methylethyenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione;
- (212) 4-[4-(1,1-dimethylheptyl)-2,6-dimethoxyphenyl]-6,6-dimethylbicyclo[3.1.1]hept-2-ene-2-methanol;
- (213) 1-naphthalenyl[4-(pentyl)-1-naphthalenyl]-methanone;
- (214) 3-(2-(hydroxymethyl)-2,3-dihydro-1H-inden-4-yloxy)phenyl 4,4,4-trifluorobutane-1-sulfonate;
- (215) N-(benzo[1,3]dioxol-5-ylmethyl)-7-methoxy-2-oxo-8-pentyl-1,2-dihydroquinoline-3-carboxamide;
- (216) N-[3-(2-methoxyethyl)-4,5-dimethylthiazol-2-ylidene]-2,2,3,3-tetramethylcyclopropane-carboxamide;
- (217) 5-chloro-3-ethyl-N-[4-(piperidin-1-yl)phenethyl]-1H-indole-2-

- carboximide;
- (218) N-[4-(dimethylamino)phenethyl]-3-ethyl-5-fluoro-1H-indole-2-carboximide;
- (219) N-(1-benzylpyrrolidin-3-yl)-5-chloro-3-ethyl-1H-indole-2-carboxamide;
- (220) [5-(2-fluorophenyl)-1-pentyl-1H-pyrrol-3-yl](naphthalene-1-yl)methanone;
- (221) (3'-(aminocarbonyl)[1,1'-biphenyl]-3-yl)-cyclohexylcarbamate;
- (222) 5-(biphenyl-4-ylmethyl)-N,N-dimethyl-1H-tetrazole-1-carboxamide;
- (223) 6-methyl-2-(p-tolylamino)-4H-benzo[d][1,3]oxazin-4-one;
- (224) [1,1'-biphenyl]-3-yl-carbamic acid, cyclohexyl ester;
- (225) 4-hydroxy-N-(4-hydroxyphenethyl)-3-(pentylamino)-benzamide; and
- (226) 3'-carbamoyl-6-hydroxy-[1,1'-biphenyl]-3-ylcyclohexylcarbamate;

Subsection 1201.1(d) is amended to read as follows:

- (d) Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible, within the specific chemical designation:
- (1) Cyclobarbitol; Hexemal; Cyclobarbitone;
 - (2) Etaqualone; Athinazone; Ethinazone; 3-(2-ethylphenyl)-2-methylquinazolin-4-one;
 - (3) Gamma-Hydroxybutyric Acid [other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium xybutyrate];
 - (4) Mecloqualone; and
 - (5) Methaqualone;

Subsection 1201.1(e) is amended to read as follows:

- (e) Stimulants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- (1) Alpha-ethyltryptamine;
 - (2) Alpha-methyltryptamine;
 - (3) Aminorex;
 - (4) Brolamfetamine, bromo-DMA, 2,5-Dimethoxy-4-bromoamphetamine, Dimethoxybromoamphetamine (DOB);
 - (5) 1,4-dibenzylpiperazine;
 - (6) 1-(4-bromo-2,5-dimethoxybenzyl)-piperazine;
 - (7) 1-(4-fluorophenyl)-piperazine;
 - (8) 1-(2-methoxyphenyl)-piperazine;
 - (9) 1-(4-chlorophenyl)-piperazine;
 - (10) 1-(4-methoxyphenyl)-piperazine;
 - (11) 1-(3-methylbenzyl)piperazine;
 - (12) 1-benzyl-4-methylpiperazine;
 - (13) 8-methyl-8-azabicyclo[3.2.1]octan-3-yl 4-fluorobenzoate;
 - (14) methyl 3-(4-fluorophenyl)-8-methyl-8-azabicyclo[3.2.1]octane-2-carboxylate;
 - (15) Cathinone; Any compound (not being bupropion) structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:
 - (A) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;
 - (B) By substitution at the 3-position with an alkyl substituent; or
 - (C) By substitution at the nitrogen atom with alkyl or dialkyl

groups, or by inclusion of the nitrogen atom in a cyclic structure;

- (16) 2-diphenylmethylpyrrolidine, including 2-Benzylhydrilpyrrolidin, (S)-(-)-2-(diphenylmethyl)pyrrolidine, (S)-2-diphenylmethylpyrrolidine; (2S)-2-Benzylhydrilpyrrolidine; (2S) diphenylmethylpyrrolidine;
- (17) Fenethylline;
- (18) Mephedrone (4-methyl-N-methylcathinone), BZ-6378, 4-methylephedrone;
- (19) Methcathinone, including 4-MEC 4-methyl-N-ethylcathinone, 4-methylethcathinone, para-methyl-N-ethylcathinone, para-methylethcathinone, 4-methyl-ethylcathinone;
- (20) Methylenedioxyprovalerone (MDPV);
- (21) Methylone;
- (22) N-Benzylpiperazine, (BZP) benzylpiperazine, N-benzylpiperazine;
- (23) N-ethylamphetamine;
- (24) N-Hydroxy-3, 4-methylenedioxyamphetamine;
- (25) N, N-Dimethylamphetamine;
- (26) 4-methyl-N-ethylcathinone (“4-MEC”);
- (27) 4-methyl-alpha-pyrrolidinopropiophenone (“4-MePPP”);
- (28) Alpha-pyrrolidinopentiophenone (“ α -PVP”), (a-PVP, alpha-PVP), a-Pyrrolidinopentiophenone, 1-phenyl-2-(1 - pyrrolidiny)-1-pentanone, alpha-pyrrolidinovalerophenone, a-pyrrolidinovalerophenone;
- (29) 1-(1, 3-benzodioxol-5-yl)-2-(methylamino)butan-1-one (“butylone”);
- (30) 2-(methylamino)-1-phenylpentan-1-one (“pentedrone”);
- (31) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (“pentylone”);
- (32) 4-fluoro-N-methylcathinone (“4-FMC”), including 4-ethylmethcathinone, 4-ethyl-methcathinone, Flephedrone, 4-

- fluoromethcathinone;
- (33) 3-fluoro-N-methylcathinone (“3-FMC”), 3-fluoromethcathinone;
- (34) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (“naphyrone”);
- (35) Alpha-pyrrolidinobutiophenone (“ α -PBP”) (a-PBP, alpha-PBP) alpha-Pyrrolidinobutiophenone, a-Pyrrolidinobutiophenone, (RS)1-phenyl-2-(1-pyrrolidinyl)-1-pentanone;
- (36) 2-DPMP, including desoxypipradrol, diphenylprolinol, 2-Diphenylmethylpiperidine, 2-benzhydrylpiperidine;
- (37) 2-FMC, 2-fluoromethcathinone;
- (38) 3,4-DMMC, 3,4-dimethylmethcathinone;
- (39) 4-MBC, Bazedrone, (\pm)-1-(4-methylphenyl)-2-(benzylamino)propan-1-one, 4-methyl-N-benzylcathinone, N-benzyl-4-methylcathinone, 1-(4 methylphenyl)-2-benzylaminopropan-1-one;
- (40) 4-MeMABP, 4-methylbuphedrone, (2-Methylamino-1-(4-methylphenyl)butan-1-one), 2-methylamino-1-(4-methylphenyl)butan-1-one;
- (41) a-PPP, alpha-PPP, alpha-pyrrolidinopropiophenone, a-pyrrolidinopropiophenone;
- (42) Buphedrone, a-methylamino-butyrophenone, 2-(methylamino)-1-phenylbutan-1-one, alpha-methylamino-butyrophenone;
- (43) Butylone, bk-MBDB, beta-Keto-N-methylbenzodioxolylpropylamine, beta-Keto-N-methyl-3,4-benzodioxolybutanamine;
- (44) D2PM, diphenyl-2-pyrrolidinyl-methanol;
- (45) Dimethocaine, (3-diethylamino-2,2-dimethylpropyl)-4-aminobenzoate;
- (46) DMBDB, bk-DMBDB, dibutylone, 1-(Benzo[d][1,3]dioxol-5-yl)-2-(dimethylamino)butan-1-Dibutylone) one;
- (47) DMEC, dimethylethcathinone;
- (48) DMMC, dimethylmethcathinone;

- (49) Ephedrone (sometimes used as another name for methcathinone)
2-(methylamino)-1-phenylpropan-1-one; OR 2-methylamino-1-phenylpropan-1-one;
- (50) Ethcathinone, 2-ethylamino-1-phenyl-propan-1-one;
- (51) Ethylethcathinone;
- (52) Ethylmethcathinone;
- (53) Ethylone 3,4-methylenedioxy-N-ethylcathinone; OR 3,4-methylenedioxyethylcathinone; OR 3,4-methylenedioxyethylcathinone; OR 3,4-methylenedioxyethcathinone;
- (54) Eutylone beta-Keto-Ethylbenziodioxolylbutanamine;
- (55) Fluorococaine;
- (56) Fluoroethcathinone;
- (57) Fluoroisocathinone;
- (58) Fluoromethcathinone;
- (59) HMMC 3-methoxymethcathinone;
- (60) Isopentadrone;
- (61) MaPPP, 4-MePPP, MPPP 4-methyl-alpha-pyrrolidinopropiophenone; OR 4-methyl-alpha-pyrrolidinopropiophenone; OR methylpyrrolidinopropiophenone; OR Methylpyrrolidinopropiophenone;
- (62) MBP Methylbuphedrone;
- (63) MBZP 1-methyl-4-benzylpiperazine;
- (64) MDAI methylenedioxy-aminoindane; OR 5,6-methylenedioxy-2-aminoindane;
- (65) MDAT 6,7-methylenedioxy-2-aminotetralin;
- (66) MDDMA Dimethylone;
- (67) MDMC Methylenedioxymethcathinone;
- (68) MDPBP 3,4-methylenedioxy-alpha-pyrrolidinobutiophenone; OR 3,4-methylenedioxy-alpha-pyrrolidinobutiophenone;

- (69) MDPPP 3,4-methylenedioxy-a-pyrrolidinopropiophenone; OR (RS)-1-(3,4-methylenedioxyphenyl)-2-(1-pyrrolidinyl)-1-propanone; OR 3,4-methylenedioxy-alpha-pyrrolidinopropiophenone;
- (70) MDPV, MDPK 3,4-methylenedioxyprovalerone; OR methylenedioxyprovalerone;
- (71) MEC Methylethcathinone;
- (72) Mephedrone, 4-MMC 4-methylmethcathinone; OR 4-methylephedrone; OR (RS)-2-methylamino-1-(4-methylphenyl)propan-1-one;
- (73) Metamfepramone, N,N-DMMC N,N-dimethylcathinone;
- (74) Methedrone, Bk-PMMA, PMMC para-methoxymethcathinone; OR 4-methoxymethcathinone; OR methoxyphedrine; OR (RS)-1-(4-methoxyphenyl)-2-(methylamino)propan-1-one;
- (75) Methylmethcathinone;
- (76) Methylone, bk-MDMA, MDMC 3,4-methylenedioxy-N-methylcathinone; OR 3,4-methylenedioxy-methylcathinone; OR 3,4-methylenedioxy-methylcathinone;
- (77) MOMC Methoxymethcathinone;
- (78) MOPPP 4-methoxy-alpha-pyrrolidinopropiophenone; OR 4-methoxy-a-pyrrolidinopropiophenone;
- (79) MPBP 4-methyl-alpha-pyrrolidinobutyrophenone; OR 4-methyl-a-pyrrolidinobutyrophenone; OR 4-methyl-alpha-pyrrolidinobutyrophenone; OR 4-methyl-a-pyrrolidinobutyrophenone;
- (80) NRG-1, Naphyrone naphthylpyrovalerone;
- (81) NRG-2;
- (82) Pentedrone a-methylamino-Valerophenone; OR 2-(methylamino)-1-phenyl-1-pentanone; OR 2-methylamino-1-phenyl-1-pentanone;
- (83) Pentylone beta-Keto-N-methylbenzodioxolylpentanamine; OR beta-keto-ethylbenzodioxolylpentanamine;
- (84) 1-(2-Fluorophenyl)propan-2-amine, (2-FA);

- (85) N-Methyl-1-(benzofuran-2-yl)propan-2-amine, (2-MAPB);
- (86) 1-(3-Fluorophenyl)propan-2-amine, (3-FA), (RS)-1-(3-Fluorophenyl)propan-2-amine;
- (87) (RS)-1-(3-fluorophenyl)-N-methylpropan-2-amine, (3-FMA);
- (88) 1-(4-Chlorophenyl)propan-2-amine, para-Chloroamphetamine (PCA), 4-chloroamphetamine (4-CA);
- (89) Levmetamfetamine or (-)-Methamphetamine; L-Methylamphetamine or (-)-Deoxyephedrine or R(-)-N-Methylamphetamine;
- (90) 1-(3-fluorophenyl)-2-(methylamino)-1-propanone;
- (91) 1-(4-fluorophenyl)-2-(methylamino)-1-propanone;
- (92) 1-(4-methoxyphenyl)-2-(methylamino)-1-propanone;
- (93) 2-(ethylamino)-1-(4-methoxyphenyl)-1-propanone;
- (94) 1-(2-naphthalenyl)-2-(1-pyrrolidinyl)-1-pentanone;
- (95) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)-1-butanone;
- (96) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)-1-pentanone;
- (97) 2-(ethylamino)-1-phenyl-1-propanone;
- (98) 1-phenyl-2-(1-pyrrolidinyl)-1-propanone;
- (99) 1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-propanone;
- (100) 1-(4-methoxyphenyl)-2-(1-pyrrolidinyl)-1-propanone;
- (101) 1-(1,3-benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-propanone;
- (102) 1-phenyl-2-(1-pyrrolidinyl)-1-pentanone;
- (103) 2-amino-1-(4-fluoro)-1-propanone;
- (104) 2-(ethylamino)-1-(4-ethylphenyl)-1-propanone;
- (105) 2-(dimethylamino)-1-phenyl-1-propanone;
- (106) 1-(1,3-benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-butanone;
- (107) 1-(methylphenyl)-2-(1-pyrrolidinyl)-1-hexanone;

- (108) 1-(methylphenyl)-2-(1-pyrrolidinyl)-1-hexanone;
- (109) 2-(methylamino)-1-phenyl-1-butanone;
- (110) 2-(methylamino)-1-p-tolyl-1-butanone;
- (111) 1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-butanone;
- (112) 1-(3,4-dimethylphenyl)-2-(methylamino)-1-propanone;
- (113) 1-phenyl-2-(1-pyrrolidinyl)-1-butanone;
- (114) 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)-1-propanone;
- (115) 1-(4-methylphenyl)-2-(benzylamino)-1-propanone;
- (116) 1-(1-naphthyl)-2-(1-pyrrolidinyl)-1-pentanone;
- (117) 1-(1,3-benzodioxol-5-yl)-2-(benzylamino)-1-propanone;
- (118) 1-(1,3-benzodioxol-5-yl)-2-(benzylamino)-1-butanone;
- (119) 1-(1,3-benzodioxol)-2-[hydroxy(methyl)-amino]-1-propanone;
- (120) 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)-1-butanone;
- (121) 2-(ethyl(methyl)amino)-1-phenyl-butanone;
- (122) 2-(ethyl(methyl)amino)-1-phenyl-1-propanone;
- (123) 2-(methylamino)-1-m-tolyl-1-propanone;
- (124) 2-(pyrrolidin-1-yl)-1-(thiophen-2-yl)-1-pentanone;
- (125) 1-(4-fluorophenyl)-2-(methylamino)-1-butanone;
- (126) 1-(4-methoxyphenyl)-2-(pyrrolidin-1-yl)-1-butanone;
- (127) 1-(4-ethylphenyl)-2-(pyrrolidin-1-yl)-1-butanone;
- (128) 1-(4-methoxy-3-methylphenyl)-2-(methylamino)-1-propanone;
- (129) 2-(ethylamino)-1-(3-methylphenyl)-1-propanone;
- (130) 2-amino-(1H-indol-5-yl)propan-1-one;
- (131) 1-phenyl-2-(piperidin-1-yl)butan-1-one;
- (132) 2-methylamino-1-(2,4,5-trimethylphenyl)-propan-1-one;

- (133) 1-(4-fluorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one;
- (134) 1-(benzo[d][1,3]dioxol-5-yl)-2-(dimethylamino)pentan-1-yl;
- (135) 1-(2-fluorophenyl)-N-methyl-propan-2-amine;
- (136) 1-(2-fluorophenyl)-propan-2-amine;
- (137) 1-(3-fluorophenyl)-propan-2-amine;
- (138) 1-(3-fluorophenyl)-N-methyl-propan-2-amine;
- (139) N-ethyl-N-methyl-1-phenylpropan-2-amine;
- (140) 1-(benzofuran-4-yl)propan-2-amine;
- (141) 1-(2,3-dihydrobenzofuran-5-yl)propan-2-amine;
- (142) 1-(2,3-dihydrobenzofuran-6-yl)propan-2-amine;
- (143) N,N-dimethyl-1-phenylpropan-2-amine;
- (144) 5,6,7,8-tetrahydrobenzo[1,3]-benzodioxol-7-amine;
- (145) N-methyl-4-(methylthio)-benzene-ethanamine;
- (146) 1-(4-chlorophenyl)-propan-2-amine;
- (147) 1-(2,4,6-trimethoxyphenyl)-propan-2-amine;
- (148) 1-(2,4,5-trimethoxyphenyl)-propan-2-amine;
- (149) 1-(2,5-dimethylphenyl)-propan-2-amine;
- (150) 1-(3,4-dimethylphenyl)-propan-2-amine;
- (151) N-(1-phenylpropan-2-yl)propan-1-amine;
- (152) 4-(2-aminopropyl)phenol;
- (153) 3,4-methylenedioxy-N,N-dimethyl-amphetamine;
- (154) N-ethyl-1-(4-methoxyphenyl)propan-2-amine;
- (155) 6,7-dihydro-5H-inden[5,6-d][1,3]dioxol-6-amine;
- (156) 5-methoxy-6-methyl-2,3-dihydro-1H-inden-2-amine;
- (157) N-methyl-6,7-dihydro-5H-cyclopenta[1,3]-benzodioxol-6-

- amine;
- (158) N-methyl-2,3-dihydro-1H-inden-2-amine;
- (159) 2-[4-(2-fluoroethylthio)-2,5-dimethoxyphenyl]ethanamine;
- (160) 8-bromo-2,3,6,7-tetrahydro-benzo[1,2-b;4,5-b']difuran-4-ethanamine;
- (161) 4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)-methyl-benzene-ethanamine];
- (162) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)-ethanamine;
- (163) 2-(2,5-dimethoxy-3,4-dimethylphenyl)-ethanamine;
- (164) 2-(4-ethyl-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)-ethanamine;
- (165) 2-(2,5-dimethoxy-3,4-dimethylphenyl)-N-(2-methoxybenzyl)-ethanamine;
- (166) 2-(2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)-ethanamine;
- (167) 2-(2,5-dimethoxyphenyl-4-nitro)-N-[(2-methoxyphenyl)methyl]-ethanamine;
- (168) 1-(4-iodo-2,5-dimethoxyphenyl)propan-2-amine;
- (169) 1-(4-chloro-2,5-dimethoxyphenyl)propan-2-amine;
- (170) 1-(4-bromo-2,3,6,7-tetrahydrofuro[2,3-f]benzofuran-8-yl)propan-2-amine;
- (171) (2,5-dimethoxyphenyl)-propan-2-amine;
- (172) 1-[4-(ethylthio)-2,5-dimethoxyphenyl]propan-2-amine;
- (173) 1-(4-ethoxy-2,5-dimethoxyphenyl)propan-2-amine;
- (174) 1-[2,5-dimethoxy-4-(propylthio)phenyl]propan-2-amine;
- (175) 1-(4-ethyl-2,5-dimethoxyphenyl)propan-2-amine;
- (176) N-benzyl-2-phenylethanamine;
- (177) N,N-dimethyl-2-phenylethanamine;
- (178) 6-chloro-aminotetralin;

- (179) 2-phenethylamine;
- (180) 2-phenyl-propan-1-amine;
- (181) 1-methylamino-1-(3,4-methylenedioxy-phenyl)propane;
- (182) N-methyl-3-phenylbicyclo[2.2.1]heptan-2-amine;
- (183) 1-(2-methoxyphenyl)-N-methylpropan-2-amine;
- (184) 2-(4-(allyloxy)-3,5-dimethoxyphenyl)ethanamine;
- (185) 4-methylhexan-2-amine;
- (186) 4-methyl-5-phenyl-2-amino-oxazoline;
- (187) (3-dimethylamino-2,2-dimethylpropyl)-4-aminobenzoate;
- (188) 1-(4-fluorophenyl)-2-(methylamino)-propan-1-ol;
- (189) 4-methyl-5-p-tolyl-4,5-dihydrooxazol-2-amine;
- (190) 1-phenyl-2-(pyrrolidin-1-yl)propan-1-ol;
- (191) 1-(3-methoxyphenyl)-N-propylcyclohexan-amine;
- (192) 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone;
- (193) 1-phenylcyclohexan-amine;
- (194) 1-[1-(benzothiophen-2-yl)cyclohexyl]piperidine;
- (195) 1-(1-p-tolylcyclohexyl)-piperidine;
- (196) 1-(4-methoxyphenyl)-N-propylcyclohexan-amine;
- (197) 1-[1-(4-methoxyphenyl)cyclohexyl]-piperidine;
- (198) 1-[1-(3-methoxyphenyl)cyclohexyl]-piperidine;
- (199) 1-phenyl-N-propylcyclohexanamine;
- (200) N-(2-methoxyethyl)-1-phenylcyclohexan-amine;
- (201) N-(2-ethoxyethyl)-1-phenylcyclohexan-amine;
- (202) N-(3-methoxypropyl)-1-phenylcyclohexan-amine;
- (203) 3-[1-(piperidin-1-yl)cyclohexyl]-phenol;

- (204) 2-(methoxyphenyl)-2-(methylamino)cyclohexanone;
- (205) N-ethyl-1-(thiophen-2-yl)cyclohexanamine;
- (206) 2-(2-chlorophenyl)-2-(ethylamino)-cyclohexanone);
- (207) 2-(diphenylmethyl)-piperidine;
- (208) 2-benzhydrylpyrrolidine;
- (209) a,a-diphenyl-(pyrrolidin-2-yl)methanol;
- (210) methyl 2-(3,4-dichlorophenyl)-2-(piperidin-2-yl)acetate;
- (211) methyl 2-(3-chlorophenyl)-2-(piperidin-2-yl)acetate;
- (212) methyl 2-(piperidin-2-yl)-2-p-tolylacetate; and
- (213) ethyl 2-phenyl-2-(piperidin-2-yl)acetate;

Subsection 1201.1(f)(2) is amended to read as follows:

- (2) Unclassified Synthetic Cannabinoids:
 - (A) AM-087 (6aR,10aR)-3-(2-methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
 - (B) AM-356 (methanandamide); (5Z,8Z,11Z,14Z)-N-[(1R)-2-hydroxy-1-methylethyl] icosa-5,8,11,14-tetraenamide; or arachidonyl-1'-hydroxy-2'-propylamide;
 - (C) (5Z,8Z,11Z,14Z)-N-[(1R)-2-hydroxy-1-methylethyl] icosa-5,8,11,14-tetraenamide; or arachidonyl-1'-hydroxy-2'-propylamide;
 - (D) AM-411(6aR,10aR)-3-(1-adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
 - (E) AM-855(4aR,12bR)-8-hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol;
 - (F) AM-905(6aR,9R,10aR)-3-[(E)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol;
 - (G) AM-906(6aR,9R,10aR)-3-[(Z)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol;

- (H) AM-2389(6aR,9R,10aR)-3-(1-hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol;
- (I) BAY38-7271(-)-(R)-3-(2-Hydroxymethylindanyl-4-oxy)phenyl-4,4,4-trifluorobutyl-1-sulfonate;
- (J) CP 50,556-1 (Levonantradol);
- (K) 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; or [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-;
- (L) octahydrophenanthridin-1-yl] acetate; or [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10, 10a-octahydrophenanthridin-1-yl]acetate;
- (M) HU-210(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-;
- (N) (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; or [(6aR,10aR)-9-(hydroxymethyl) -6,6-dimethyl-3- (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; or 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol;
- (O) HU-211 (Dexanabinol);
- (P) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3- (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; or (6aS,10aS)-9-(hydroxymethyl) -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
- (Q) HU-2433-dimethylheptyl-11-hydroxyhexahydrocannabinol;
- (R) HU-308[(91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol;
- (S) HU-3313-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione;
- (T) JTE-907N-(benzol[1,3]dioxol-5-ylmethyl) -7-methoxy-2-oxo-8-pentyl-1,2-dihydroquinoline-3-carboxamide;

- (U) JWH-051((6aR,10aR)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-9-yl)methanol;
- (V) JWH-057(6aR,10aR)-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-Dibenzo[b,d]pyran;
- (W) JWH-133(6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran;
- (X) JWH-359 (6aR,10aR)-1-methoxy-6,6,9-trimethyl-3-[(2R)-1,1,2-trimethylbutyl]-6a,7,10,10a-tetrahydrobenzo[c]chromene;
- (Y) URB-597[3-(3-carbamoylphenyl)phenyl]-N-cyclohexylcarbamate;
- (Z) URB-602 [1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester; or cyclohexyl [1,1'-biphenyl]-3-ylcarbamate;
- (AA) URB-7546-methyl-2-[(4-methylphenyl)amino]-4H-3,1-benzoxazin-4-one;
- (BB) URB-937 3'-carbamoyl-6-hydroxy-[1,1'-biphenyl]-3-yl cyclohexylcarbamate;
- (CC) WIN 55,212-2(R)-(+) [2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone; or [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[(1,2,3-de)-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone;
- (DD) AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole);
- (EE) AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole);
- (FF) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate ("PB-22"; QUPIC);
- (GG) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate ("5-fluoro-PB-22"; 5F-PB-22);
- (HH) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide ("AB-FUBINACA");

- (II) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (“ADB-PINACA”);
- (JJ) THJ-2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone;
- (KK) (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (“AB-CHMINACA”);
- (LL) (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) (“AB-PINACA”);
- (MM) N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, (5F-AB-PINACA);
- (NN) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide, (5F-ADBICA or 5F-ADB-PICA);
- (OO) (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, (5F-AMB or 5F-MMB-PINACA or 5F-AMB-PINACA); and
- (PP) N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, N-(1-Adamantyl)-1-(5-fluoropentyl)-1 H-indazole-3-carboxamide, (5F-APINACA or 5F-AKB48);

Subsection 1201.1 is amended by adding two new paragraphs (g) and (h) to read as follows:

- (g) Substituted tryptamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from 2-(1H-indol-3-yl) ethanamine (*i.e.*, tryptamine) by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure regardless of whether the compound is further substituted at the alpha position with an alkyl group or further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups. Examples include the following:
 - (1) (4-AcO-DET) 3-(2-Diethylaminoethyl)-1H-indol-4-yl acetate (DET);
 - (2) (4-AcO-DMT, OAcetylpsilocin) 4-acetoxy-N,N-dimethyltryptamine;
 - (3) (4-AcO-DPT) 4-acetoxy-N,N-dipropyltryptamine;

- (4) (4-HO-DiPT) 4-Hydroxy-di-isopropyl-tryptamine; OR 3-[2-(diisopropylamino)ethyl]-1H-indol-4-ol; OR 4-Hydroxy- N,N-diisopropyltryptamine;
- (5) (4-HO-MET) 4-hydroxy-N-methyl-N-ethyltryptamine;
- (6) (4-HO-MiPT) 3-(2-[Isopropyl(methyl)amino]ethyl)-1H-indol-4-ol;
- (7) (4-HO-MPMI) (R)-3-(N-methylpyrrolidin-2-ylmethyl)-4-hydroxyindole;
- (8) (4-HO-MPT) 3-{2-[methyl(propyl)amino]ethyl}-1H-indol-4-ol; OR 4- hydroxy-N-methyl-N-propyltryptamine;
- (9) (4-MeO-MiPT) 4-methoxy-N-methyl-N-isopropyltryptamine; OR 3-[2 (Isopropylmethylamino)ethyl]-4-methoxyindole;
- (10) 4-methyl-aET 4-Methyl- α -ethyltryptamine; OR 1-ethyl-2-(4-methyl-1H- indol-3-yl)-ethylamine;
- (11) (5-MeO-AMT) 1-(5-methoxy-1H-indol-3-yl)propan-2-amine;
- (12) (5-MeO-DALT) N,N-diallyl-5-methoxytryptamine; OR N-allyl-N-[2-(5- methoxy-1H-indol-3-yl)ethyl]prop-2-en-1-amine;
- (13) (5-MeO-DET) N,N-Dethyl-5-Methoxytryptamine;
- (14) (5-MeO-DPT) N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-propylpropan-1- amine;
- (15) (5-MeO-MiPT, Moxy, Moxie) N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine;
- (16) (5-MeO-MPMI) (R)-3-(N-methylpyrrolidin-2-ylmethyl)-5-methoxyindole;
- (17) (DPT) N,N-Dipropyltryptamine; OR Dipropyltryptamine; OR 3-[2-(dipropylamino)ethyl]indole;
- (18) (Methyltryptamine, NMT) N-methyltryptamine; OR 2-(1H-Indol-3-yl)-N-methylethanamine; and
- (19) (MiPT) N-isopropyl-N-methyltryptamine;
- (20) 2-(1H-indol-3-yl)-N-methyl-ethanamine;
- (21) N-(2-(1H-indol-3-yl)ethyl)-N-methylpropan-2-amine;

- (22) N-[2-(1H-indol-3-yl)ethyl]-N-isopropylpropan-2-amine;
 - (23) N,N-dipropyl-1H-indole-3-ethanamine;
 - (24) 3-[2-(diethylamino)ethyl]-1H-4yl acetate;
 - (25) 3-(2-[isopropyl(methyl)amino]ethyl)-1H-indol-4-ol;
 - (26) 3-[2-(bis[1-methylethyl]amino)ethyl]-1H-indol-4-ol acetate;
 - (27) 3-(2-[isopropyl(methyl)amino]ethyl)-1H-indol-4-ol acetate;
 - (28) 3-[2-(dimethylamino)ethyl]-1H-indol-4-yl acetate;
 - (29) 4-hydroxy-N,N-diethyl-1H-indole-ethanamine;
 - (30) 4-methoxy-N,N-dimethyl-1H-indole-3-ethanamine;
 - (31) 3-(2-(diisopropylamino)ethyl)-1H-indol-4-ol;
 - (32) 3-[2-(ethyl[methyl]amino)ethyl]-1H-indol-4-yl acetate;
 - (33) 3-(2-(dipropylamino)ethyl)-1H-indol-4-ol;
 - (34) 3-[2-(dipropylamino)ethyl]-1H-indol-4-yl acetate;
 - (35) 4-acetoxy-N,N-di-2-propen-1-yl-1H-indole-3-ethanamine;
 - (36) 5-methoxy-N,N-di-2-propen-1-yl-1H-indole-3-ethanamine;
 - (37) 3-(2-(dimethylaminoethyl)-1H-indol-5-ol);
 - (38) 2-(5-methoxy-1H-indol-3-yl)-N,N-dimethylethanamine;
 - (39) N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropyl;
 - (40) 1-(5-methoxy-1H-indol-3-yl)propan-2-amine;
 - (41) 3-[2-(dimethylamino)-ethyl]-1H-indol-5-yl acetate;
 - (42) N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-propylpropan-1-amine;
 - (43) N,N-diethyl-2-(5-methoxy-1H-indol-3-yl)ethanamine; and
 - (44) N-ethyl-2-(5-methoxy-1H-indol-3-yl)-N-methyl-ethanamine;
- (h) Unclassified novel psychoactive substances
- (1) (2-AI, 2-aminoindane) 2,3-dihydro-1H-inden-2-amine;

- (2) (2-FMA) 2-fluoromethamphetamine; OR (RS)-1-(2-fluorophenyl)-N-methylpropan-2-amine; N-Methyl-1-(3-fluorophenyl)propan-2-amine;
- (3) (2-MeO-ketamine) methoxyketamine;
- (4) (3-HO-PCE) 3-[1-(ethylamino) cyclohexyl]phenol;
- (5) (3-HO-PCP) 3-hydroxyphencyclidine (3-MeO-PCE) 3-Methoxyeticyclidine;
- (6) (3-MeO-PCP) 1-[1-(3-methoxyphenyl)cyclohexyl]-piperidine; OR 3-methoxyphencyclidine;
- (7) (4-FMA) 4-fluoromethamphetamine; OR (RS)-1-(4-fluorophenyl)-N-methylpropan-2-amine; N-Methyl-1-(4-fluorophenyl)propan-2-amine;
- (8) (4-MeO-PCP, methoxydine) 4-Methoxyphencyclidine; OR 1-[1-(4-methoxyphenyl)cyclohexyl]-piperidine;
- (9) (5-IAI) 5-Iodo-2-aminoindane; OR 5-iodo-2,3-dihydro-1H-inden-2-amine;
- (10) (5-ME) 5-methyl-ethylone;
- (11) (BTCP) Benzothiophenylcyclohexylpiperidine;
- (12) (DBP, DBZP) 1,4-Dibenzylpiperazine;
- (13) (Ethyl-ketamine) 2-(2-chlorophenyl)-2-(ethylamino)cyclohexanone;
- (14) (Fluoromethamphetamine);
- (15) (Fluorophenylpiperazine; pFPP; 4-FPP; fluoperazine; flipiperazine) Para-fluorophenylpiperazine; OR 1-(4-fluorophenyl)piperazine;
- (16) (Kratom) 7-hydroxymitragynine;
- (17) (MCP) 1-(3-Chlorophenyl)piperazine, OR Chlorophenylpiperazine, OR meta chlorophenylpiperazine; OR 1-(3-chlorophenyl)piperazine; OR 3-chlorophenylpiperazine;
- (18) (Methiopropamine, MPA) 1-(thiophen-2-yl)-2-methylaminopropane; N-Methyl-1-(thiophen-2-yl)propan-2-amine;

- (19) (Methoxetamine, MXE, 3 MeO-2-Oxo-PCE) (RS)2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone;
- (20) (MPHP) Methyl-alpha-pyrrolidinohexiophenone; OR Methyl-pyrrolidino-hexanophenone;
- (21) (O-desmethyltramadol, O-DT) 3-[2-(1-Amino-1-methylethyl)-1-hydroxycyclohexyl]phenol;
- (22) (Phenazepam) 7-Bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one;
- (23) (pMeOPP, MeOPP) 1-(4-Methoxyphenyl) piperazine;
- (24) (pTFMPP) 1-[4-(trifluoromethylphenyl)] piperazine;
- (25) (TFMPP) 3-trifluoromethylphenylpiperazine; OR 1-[3-(trifluoromethyl)phenyl]piperazine; OR 1-(3-trifluoromethylphenyl) piperazine; OR 1-(3-trifluoromethylphenyl)piperazine; OR 1-(3-[trifluoromethylphenyl])piperazine.
- (26) (\pm)-2,5-Dimethoxy-alpha-methylphenethylamine, (DMA);
- (27) 6,6,9-Trimethyl-3-(3-methyl-2-octanyl)-7,8,9,10-tetrahydro-6H-benzo[c]chromen-1-ol, (DMHP), Dimethylheptylpyran;
- (28) 3-(2-(Dimethylamino)ethyl)indole, (DMT);
- (29) P-methoxy-alpha-methylphenethylamine, (PMA);
- (30) Methylenedioxyamphetamine, 3,4-methylenedioxyamphetamine, MDA, tenamfetamine (INN), Sally, Sass, Sass-a-frass;
- (31) Tenocyclidine (TCP);
- (32) N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide, (5F-ABICA);
- (33) [1-(2-morpholin-4-ylethyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl) methanone, (A-796,260);
- (34) N-[(1S)-1-(Aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, (AB-CHMINACA);
- (35) (4-F-a-PVP) 1-(4-fluorophenyl)-2-(1-pyrrolidinyl)pentan-1-one;
- (36) (4-MeBP) 1-(4-Methylphenyl)-2-methylaminobutan-1-one;

- (37) (4-MeO-a-PVP) 1-(4-methoxyphenyl)-2-(1-pyrrolidinyl)pentan-1-one;
- (38) (NEB) 1-phenyl-2-ethylaminobutan-1-one;
- (39) (a-PHP) 1-phenyl-2-(1-pyrrolidinyl)hexan-1-one;
- (40) (a-PHPP) 1-phenyl-2-(1-pyrrolidinyl)heptan-1-one;
- (41) (a-PVT) 1-(thiophen-2-yl)-2-(1-pyrrolidinyl)pentan-1-one;
- (42) (NENK) 2-(2-chlorophenyl)-2-(ethylamino)cyclohexanone;
- (43) (5-MeO-DMT) 5-methoxy-N,N-dimethyltryptamine;
- (44) (AMT) alpha-methyltryptamine;
- (45) (3,4-CTMP) methyl 2-(3,4-dichlorophenyl)-2-(piperidin-2-yl);
- (46) (AH-7921) 3,4-dichloro-N-((1-(dimethylamino)cyclohexyl)methyl)benzamide;
- (47) (4-ethyl-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)methanone;
- (48) 2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)-ethanone;
- (49) 1-[1-(2-cyclohexylethyl)-1H-indol-3-yl]-2-(2-methoxyphenyl)-Ethanone;
- (50) [1-(5-fluoropentyl)-1H-indol-3-yl](2-iodophenyl)methanone;
- (51) (2-methyl-1-[(1-methylpiperidin-2-yl)methyl]-6-nitro-1H-indol-3-yl)methanone; and
- (52) (1-butyl-1H-indol-3-yl)(4-methoxyphenyl)-methanone.

Section 1202, SCHEDULE II ENUMERATED, is amended as follows:

Subsection 1202.1(b) is amended to read as follows:

- (b) Opiates: Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:
 - (1) 4-anilino-N-phenethyl-4-piperidine (ANPP);
 - (2) Alfentanil;

- (3) Alphaprodine;
- (4) Anileridine;
- (5) Bezitramide;
- (6) Bulk Dextropropoxyphene (non-dosage form);
- (7) Carfentanil;
- (8) Dihydrocodeine;
- (9) Dihydroetorphine;
- (10) Diphenoxylate;
- (11) Fentanyl;
- (12) Isomethadone;
- (13) Levo-alphaacetylmethadol [Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM];
- (14) Levomethorphan;
- (15) Levorphanol;
- (16) Metazocine;
- (17) Methadone;
- (18) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (19) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (20) Pethidine (meperidine);
- (21) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine; (Meperidine intermediate-A)
- (22) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; (Meperidine intermediate-B);
- (23) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine- 4-carboxylic acid; (Meperidine intermediate-C)
- (24) Phenazocine;

- (25) Piminodine;
- (26) Racemethorphan;
- (27) Racemorphan;
- (28) Remifentanil;
- (29) Sufentanil;
- (30) Tapentadol;
- (31) (Acetylfentanyl) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide
- (32) (Butyrylfentanyl) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide;
- (33) (Fluorobutylylfentanyl) N-(4-Fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide;
- (34) (Hydroxythiofentanyl) N-(1-(2-Hydroxy-2-(thiophen-2-yl)ethyl)piperidin-4-yl)-N-phenylpropanamide;
- (35) (Isobutyrylfentanyl) N-(1-Phenethylpiperidin-4-yl)-N-phenylisobutyramide;
- (36) (Ocfentanil) N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide; N-(2-Fluorophenyl)-2-methoxy-N-(1-(2-phenylethyl)-4-piperidinyl)acetamide;
- (37) 2-(1,3-dimethoxybuta-1,3-dien-2-yl)-3-ethyl-8-methoxy-1,2,3,4,6,7,12,12b-octahydroindolo[2,3-a]quinolizine;
- (38) (2a,4aR,6aR,7R,9S,10aS,10bR)-methyl-9-acetoxy-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-1H-benzof[f]isochromene-7-carboxylate;
- (39) 4,5-epoxy-17-methylmorphinan-3-ol;
- (40) N-phenyl-N-[1-(2-phenethyl)-4-piperidinyl] acetamide;
- (41) N-(1-benzylpiperidin-4-yl)-N-(x-fluorophenyl)-butanamide;
- (42) 2-methyl-N-phenyl-N-[1-(1-phenylpropan-2-yl)piperidin-4-yl]propanamide;
- (43) 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine;

- (44) N-phenyl-N-(1-(2-(thiophen-2-yl)ethyl)piperidin-4-yl)acetamide;
- (45) 4-chloro-N-(1-phenethylpiperidin-2-ylidene)benzenesulfonamide; and
- (46) 4-chloro-N-(1-(4-nitrophenethyl)piperidin-2-ylidene)benzenesulfonamide;

Subsection 1202.1(c) is amended to read as follows:

- (c) Stimulants: Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system:
 - (1) Amphetamines, its salts, optical isomers, and salts of its optical isomers;
 - (2) Biphphetamine
 - (3) Eskatrol;
 - (4) (Ethylphenidate) ethyl 2-phenyl-2-(piperidin-2-yl)acetate;
 - (5) Lisdexamfetamine;
 - (6) Methylphenidate and its salts;
 - (7) Methamphetamine, its salts, isomers, and salts of isomers; and
 - (8) Phenmetrazine and its salts;

Section 1204, SCHEDULE IV ENUMERATED, is amended to read as follows:

1204 SCHEDULE IV ENUMERATED

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

- (a) Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - (1) Alfaxalone;
 - (2) Alprazolam;

- (3) Barbitol;
- (4) Bromazepam;
- (5) Camazepam;
- (6) Chloral betaine;
- (7) Chloral hydrate;
- (8) Chlordiazepoxide;
- (9) Clobazam;
- (10) Clonazepam;
- (11) Clorazepate;
- (12) Clotiazepam;
- (13) Cloxazolam;
- (14) Delorazepam;
- (15) Diazepam;
- (16) Dichloralphenazone;
- (17) Estazolam;
- (18) Ethyl loflazepate;
- (19) Ethchlorvynol;
- (20) Ethinamate;
- (21) Fludiazepam;
- (22) Flunitrazepam;
- (23) Flurazepam;
- (24) Fospropofol;
- (25) Halazepam;
- (26) Haloxazolam;
- (27) Ketazolam;

- (28) Loprazolam;
 - (29) Lorazepam;
 - (30) Lormetazepam;
 - (31) Mebutamate;
 - (32) Medazepam;
 - (33) Meprobamate;
 - (34) Methohexital;
 - (35) Methylphenobarbital (mephobarbital);
 - (36) Midazolam;
 - (37) Nimetazepam;
 - (38) Nitrazepam;
 - (39) Nordiazepam;
 - (40) Oxazepam;
 - (41) Oxazolam;
 - (42) Paraldehyde;
 - (43) Petrichloral;
 - (44) Phenobarbital;
 - (45) Pinazepam;
 - (46) Prazepam;
 - (47) Quazepam;
 - (48) Temazepam;
 - (49) Tetrazepam; and
 - (50) Triazolam;
- (b) Fenfluramine: Any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, (whether optical, position, or geometric), and salts of such

isomers, whenever the existence of the salts, isomers, and salts of isomers is possible: Fenfluramine;

- (c) Stimulants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Cathine;
- (2) Clortermine;
- (3) Dexfenfluramine;
- (4) Diethylpropion;
- (5) Fencamfamin;
- (6) Fenproporex;
- (7) Lorcaserin;
- (8) Mazindol;
- (9) Mefenorex;
- (10) Modafinil;
- (11) Pemoline (including organometallic complexes and chelates thereof);
- (12) Phentermine;
- (13) Pipradrol;
- (14) Sibutramine; and
- (15) SPA;

- (d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances, including its salts:

- (1) Butorphanol;
- (2) Dextropropoxyphene (Alpha-(+)-4-demethylamino-1), 2-diphenyl-1-3-methyl-2-propionoxybutane; and

- (3) Pentazocine;
- (e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;
- (f) Carisoprodol;
- (g) Zaleplon;
- (h) Zolpidem;
- (i) Zopiclone;
- (j) Suvorexant;
- (k) Tramadol;
- (l) Brotizolam; 3-(2- bromophenyl)-4-[(3- chlorophenyl)methylideneamino]-1H-1,2,4-triazole-5-thione;
- (m) Vinylbital; (Vinylbitone; Vinylbitalum);
- (n) Mesocarb;
- (o) Dezocine;
- (p) Allobarbital; Allobarbitone;
- (q) (Phenazepam) 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one;
- (r) 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno-[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine(#) 7-bromo-5-(2-chlorophenyl)-1H-benzo[e][1,4]diazepin-2(3H)-one(#) 8-bromo-1-methyl-6-phenyl-4H-[1,2,4]triazolo[4,3a][1,4]benzodiazepine;
- (s) 3-methyl-6-[3-(trifluoromethyl)phenyl][1,2,4]triazol[4,3-b]pyridazine; and
- (t) 6-(5-chloro-2-pyridyl)-6,7-dihydro-7-oxo-5H-pyrrolo[3,4- b]pyrazin-5-yl 4-methylpiperazine-1-carboxylate.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**NOTICE OF FINAL RULEMAKING****RM28-2016-01, IN THE MATTER OF THE COMMISSION'S RULES GOVERNING UNIVERSAL SERVICE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 34-802, 2-505, and 34-2003 of the District of Columbia Code,¹ of its approval of amendments to Chapter 28 (Universal Service) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in Order No. 18609, issued November 17, 2016. The full text of the amendments is published below.

2802 DISTRICT OF COLUMBIA UNIVERSAL SERVICES

2802.1 District of Columbia Universal Services shall consist of the following services:

- (a) Voice telephony services:
 - (1) Voice grade access to the public switched network or its functional equivalent, with the ability to place and receive calls;
 - (2) Minutes of use for local service provided at no additional cost to end users;
 - (3) Access to emergency services, including, access to 911 and enhanced 911 (E911) services; and
 - (4) Toll limitation services for qualifying low-income consumers at no charge to the customer.
- (b) Telecommunications Relay Service (TRS).

2820 DISTRICT OF COLUMBIA LIFELINE SERVICE PROGRAM

2820.1 The District of Columbia Lifeline Service Program is a program designed to operate in conjunction with the Federal Lifeline Program, to provide a low monthly recurring rate to qualifying residential subscribers for basic local exchange service.

2820.2 In order to qualify for the Lifeline service, customers must show that they either:

¹ D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2012 Repl.); and D.C. Official Code § 34-912(b) (2012 Repl.).

- (a) Fall below one hundred thirty-five percent (135%) of the Federal Poverty income guidelines for a household of that size; or
- (b) Participate in one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); or Veterans or Survivors Pension Benefit.

- 2820.3 Each ETC shall file tariffs implementing a Lifeline service that is consistent with both FCC and Commission regulations.
- 2820.4 Lifeline subsidies shall not be available to customers on a retroactive basis.
- 2820.5 When the entity responsible for certifying Lifeline customers notifies an ETC that a customer no longer qualifies for Lifeline service, the Lifeline rate will revert to the serving ETC's standard tariffed retail rate.
- 2820.6 Lifeline service is only available at the qualifying customer's principal residence. An applicant for Lifeline service may report only one (1) address in the District of Columbia as the principal place of residence. Post office boxes are not acceptable designations of residence. Where applicable, an apartment number must be provided.
- 2820.7 Each household receiving lifeline service is limited to one (1) lifeline service. The lifeline service is non-transferable to any other person or household.
- 2820.8 Participants in the District's Lifeline Program are eligible to receive Toll Restriction Service at no charge.
- 2820.9 District of Columbia residents who meet all eligibility requirements shall not be denied Lifeline service because of unpaid toll charges.

OFFICE OF TAX AND REVENUE

NOTICE OF FINAL RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-1335 (2012 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2014 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of this final action to amend Chapter 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The amendments to Section 319 (Special Deed Tax Sale) are necessary for the conduct of a tax sale for any or all real properties bid back from a real property tax sale pursuant to D.C. Official Code § 47-1346 subject to sale pursuant to D.C. Official Code § 47-1353(a)(1).

The rules were published as a proposed rulemaking in the *D.C. Register* on October 21, 2016 at 63 DCR 013157. No comments were received concerning the proposed rulemaking, and this final rulemaking is identical to the published text of the proposed rulemaking. OTR adopted these rules as final on November 21, 2016. The rules shall become effective upon publication of this notice in the *D.C. Register*.

Chapter 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

Section 319, SPECIAL DEED TAX SALE, is amended by striking the section in its entirety and replacing it with the following:

- 319.1 At the discretion of the Chief Financial Officer, any or all real properties bid back from a real property tax sale pursuant to § 47-1346 of the D.C. Official Code may be subject to sale pursuant to § 47-1353(a)(1) of the D.C. Official Code. This sale shall not provide for any reduction of taxes owed. The Office of Tax and Revenue (OTR), in its discretion, may exclude one or more bid back real properties from the portfolio of properties offered for sale. Nothing in this section shall be construed to limit the use of other processes to sell bid backs as permitted by law, including sales to the District or an instrumentality thereof, to a non-profit, or at a discount sale.
- 319.2 Bid back real properties may be sold:
- (a) On a one-by-one, first-come first-served basis.
 - (1) OTR may publish a list of bid backs for sale to OTR's Web site, as well as the date of the sale;

- (2) When sold on a one-by-one, first-come first-served basis, a purchaser shall have first registered for the sale; registration begins when the sale begins, and purchasers will be registered in order of arrival time based on the time the purchaser signs-in with OTR security, provided that purchaser is actively pursuing completion of the sale and processes the required documents and full payment;
- (3) Required documentation shall include a copy of the purchaser's Treasury Form W-9, a completed Form FR-500 (Combined Business Tax Registration Application) and a Buyer Registration form;
- (4) Full payment of the purchase price must be received at the time of registration in the form of cash, certified check, cashier's check or USPS money order payable to the D.C. Treasurer;
- (5) Certificates of sale shall be mailed to the successful purchaser.

DEPARTMENT OF HEALTH

NOTICE OF THIRD PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984(D.C. Law 5-48; D.C. Official Code § 44-504(a) (2012 Supp.)) (hereinafter “the Act”), and in accordance with Mayor’s Order 98-137, dated August 20, 1998, hereby gives notice of the intent to adopt a proposed rulemaking to add a new Chapter 110, entitled “Ambulatory Surgical Facilities”, to Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (“DCMR”).

These proposed rules create licensure, construction, and operating standards for ambulatory surgical facilities in the District of Columbia, and address such areas as patient care, qualifications of staff, and recordkeeping. The rules require licensure as an ambulatory surgical facility for an entity, other than a hospital or maternity center, including an office-based facility, which has as its primary practice outpatient surgery and related procedures. A nursing home, hospital, or the office of a physician, dentist or podiatrist at which outpatient surgery is not the primary medical service are exempt from licensure under this chapter. The proposed regulations expand the statutory right to a variance on the basis of undue and impractical hardship. In addition, the rules give the public a list of surgical procedures allowed to be performed in a licensed facility. By these regulations, the District will adopt the allowable procedures list from the Federal government, the posting of which is on the website of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. Each licensee is also required to develop and follow certain operating protocols, including those on personnel, preoperative testing and examinations, surgical procedures, post-anesthesia care and evaluation, discharge planning, emergency care, informed consent, and safety.

The rules were published as proposed in the *D.C. Register* on November 23, 2012 at 59 DCR 13407; comments were received and, based on those comments, some revisions were made. The proposed rulemaking was published for comment for the second time on September 6, 2013 at 60 DCR 12636. No written comments on the second publication were received from the public.

The Department now publishes the proposed regulations as a result of three (3) changes. First, these rules change the license fee structure from a flat fee, as proposed in the last publication, to one that is based on the number of surgical stations maintained by the licensee. The second change expands the statutory right to a variance on the basis of undue and impractical hardship. Third, the Department added a clarification with regard to a practitioner who performs surgical procedures that appear on the list of allowed procedures contained in the regulations but whose practice does not otherwise fit the definition of ambulatory surgical facility. For example, the allowable procedures list may include certain gynecological procedures that are invasive but only ancillary to surgery and are not commonly known as surgical procedures on their own. The proposed rules make clear that if a practitioner conducts a procedure without surgery that is on the allowable procedures list, but amounts to a routine examination or treatment, the practitioner is not required to be licensed under these rules unless the practice is otherwise defined as an ambulatory surgical facility in accordance with these rules.

This proposed rulemaking is subject to a forty-five (45) day Council review period if the Council does not act earlier to adopt a resolution approving the rules.

Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended by adding a new Chapter 110, AMBULATORY SURGICAL FACILITIES, to read as follows:

CHAPTER 110 AMBULATORY SURGICAL FACILITIES

11000 GENERAL PROVISIONS

- 11000.1 This chapter applies to all freestanding ambulatory surgical facilities (“ASF”), but shall exclude freestanding maternity centers and freestanding kidney dialysis centers.
- 11000.2 In the absence of requirements in this chapter or in other applicable regulations, the management and operation of each ASF shall be in accordance with Joint Commission standards, the American Association for Accreditation Association for Ambulatory Health Care and good medical and public health practices, and with the following standards regarding:
- (a) Pharmaceutical services, Title 42 of the Code of Federal Regulations (hereinafter "CFR") § 416.48;
 - (b) Laboratory and radiological services, 42 CFR § 416.49;
 - (c) Infection control, 42 CFR § 416.51;
 - (d) Surgical services, 42 CFR § 416.42;
 - (e) Anesthesia services, 42 CFR § 416.42(a); and
 - (f) Emergency services, 42 CFR § 416.44(c)-(d).
- 11000.3 If an ambulatory surgical facility delivers services through a contract with a business that is licensed by another jurisdiction, the ASF shall be responsible for delivery of services in compliance with the laws of the District of Columbia.
- 11000.4 Each ASF shall be licensed and shall comply with the requirements set forth in this Chapter and with those requirements set forth in Chapter 31 of Title 22-B of the District of Columbia Municipal Regulations (“DCMR”), which contains provisions on inspections, licensing and enforcement actions pertaining to ASFs and other facilities authorized under the Act.
- 11000.5 In addition to standards specified in this chapter, an ASF shall comply with:

- (a) Section 9 of the Act (D.C. Official Code § 44-508) with regard to clinical privileges;
- (b) Applicable federal standards if the ASF is a participant in the Medicare or Medicaid program; and
- (c) Any District of Columbia law that is applicable to the operation of an ASF in the District of Columbia.

11000.6 A license is nontransferable.

11000.7 The following facilities are not required to obtain a license under this chapter: an office of a licensed physician, dentist or podiatrist at which outpatient surgery is not the primary medical service provided; a licensed nursing home; or a licensed hospital.

11000.8 Each ASF shall apply for District of Columbia licensure no later than one hundred and eighty (180) days after the effective date of this chapter.

11000.9 The ASF's license shall be posted in a conspicuous place in the ASF within the public's view.

11000.10 Each facility shall meet the minimum requirements for insurance as appropriate for the number and types of operating suites in the facility and the number and types of services available as determined by the Director.

11000.11 Surgical procedures allowed in licensed ASFs are listed in § 11010 of this Chapter.

11001 ADDITIONAL LICENSING PROCEDURES FOR AMBULATORY SURGICAL FACILITIES

11001.1 Any ASF and any applicant to operate an ASF shall:

- (a) Be designated by a distinctive name, which shall not be changed without notifying the Director and receiving approval in writing. Duplication of an existing facility's name is prohibited;
- (b) Be in compliance with all local and federal laws, including the District's Fire and Life Safety Code;
- (c) Submit a written description of the ASF's quality assurance program that meets the requirements of this chapter;
- (d) Provide the following:

- (i) The governing body's bylaws, rules and regulations, or other written organizational plan;
 - (ii) The name of the medical director and his or her District of Columbia license number, and license expiration date;
 - (iii) The number of physicians, dentists, podiatrists, and advance practice nurses on staff;
 - (iv) Staffing plans for medical, nursing, allied health, and behavioral health services;
 - (v) The name of the nursing director, his or her District of Columbia license number, and license expiration date;
 - (vi) The number of surgical suites and recovery rooms; and
 - (vii) Written fire and emergency plans and procedures.
- (e) In cases of an ASF applying for first licensure after purchase, and previously licensed under other ownership, the licensure application shall include:
- (i) A signed agreement with the Director to correct any deficiencies listed in the most recent licensure inspection report;
 - (ii) A copy of the closing documents, which must include an effective date and the signatures of the buyer and seller; and
 - (iii) Evidence of payment of, or arrangement to pay, any money owed to the District by the ASF.

11001.2 There shall be disclosure of ASF ownership as follows:

- (a) If owned by an individual, partnership or trust, the names and ownership percentages of such individuals, partners or trustees must be provided, except that, in the case of a limited partnership, such information shall be provided only for those owning ten percent (10%) or more of the partnership interest and the general partner.
- (b) If owned by a for-profit corporation, the names of all stockholders with more than ten percent (10%) interest shall be disclosed.
- (c) If owned by a not-for-profit corporation, the names of the members and directors of the corporation shall be disclosed.

11001.3 Any changes in or additions to any information in the ownership control document shall be reported to the Director thirty (30) days prior to the change in ownership.

11002 VARIANCES

11002.1 The Director may authorize a variance to a specific provision(s) of this chapter.

11002.2 A facility may request a variance to a particular standard(s) or requirement(s) contained in a particular provision of this chapter when the standard or requirement poses an undue and impractical hardship unique to the operation of the requesting facility and when a variance to it would not endanger the safety or well-being of patients.

11002.3 The request for a variance shall describe how compliance with the applicable standard or requirement constitutes an undue and impractical hardship unique to the operation of the requesting facility.

11002.4 The request for variance should be in writing and should include:

- (a) A clear and reasoned description of the hardship and ramifications of compliance with the regulatory standard;
- (b) Proposed alternative(s), if any, to meet the purpose of the standard or requirement that will ensure the protection and well-being of patients; and
- (c) A Proposed time for the length of time the variance will be in force.

11002.5 The Director shall not accept a request for general variance from compliance with this chapter.

11002.6 The Director may rescind or modify a variance if:

- (a) Conditions change and it is determined that the impact on patient safety or well-being changes;
- (b) Additional information becomes known that alters the basis for the original determination on granting or denying the variance;
- (c) The facility fails to meet any condition(s) placed on the variance; or
- (d) The results of the variance jeopardize the safety or well-being of patients.

11002.7 A licensee to whom a variance has been granted shall agree that the Director's implementation of Subsection 11002.6 of this chapter is not the basis for a

contested case within the meaning of the District of Columbia Administrative Procedures Act.

- 11002.8 The Director shall notify the facility in writing of the receipt of the request for a variance. The licensee shall be notified in writing of the Director's decision on the variance request.
- 11002.9 If granted, the commissioner may attach conditions to a variance to protect the safety and well-being of patients. The Director may also grant a variation of the request if it is more suitable to the safety and well-being of patients.
- 11002.10 If a variance is denied, expires, or is rescinded, routine enforcement of the standard or requirement to which the variance was granted shall be resumed.

11003 SEPARATE LICENSE

- 11003.1 A separate license shall be required for ASFs maintained on separate premises although operated under the same management. A separate license is not required for separate buildings on the same grounds or within the same complex of buildings.
- 11003.2 A hospital that has a separate ASF that is located outside the grounds of the licensed hospital is required to have a separate license for that facility.

11004 INSPECTIONS AND ACCREDITATION

- 11004.1 The Department shall conduct inspections, surveys and investigations in accordance with the Act and with Chapter 31 of Title 22-B of the District of Columbia Municipal Regulations (22-B DCMR Chapter 31).
- 11004.2 An ambulatory surgical facility may request exemption from inspection or surveys, after having been licensed for at least one year, by submitting to the Department documentation of accreditation by, and the most recent survey from, an approved accrediting body.
- 11004.3 An ambulatory surgical facility that opts to be accredited in lieu of routine license inspection and is certified for federal participation shall comply with 42 CFR § 416.26(a)(2) and 42 CFR § 416.40, which require that federal participants meet licensure requirements in order to maintain certification.
- 11004.4 An ambulatory surgical facility that completes the requirements of Subsection 11003.2 will not be subject to inspections or licensure surveys by the Department except under the following circumstances:

- (a) The ambulatory surgical facility has applied for and has been denied accreditation or has received a provisional accreditation report from the accrediting organization on its most recent survey;
- (b) The ambulatory surgical facility has received full accreditation but has not authorized the release of the accrediting body’s report to the Department, or the Department has not received the accrediting organization's report timely; or
- (c) The Department determines, after receiving a complaint or incident report, that because of the nature or number of allegations of noncompliance, a survey by the Department is required.

11004.5 Accreditation does not limit the Department’s investigation of complaints.

11004.6 Licensees must comply with statutory provisions on inspections and accreditation as set out in the Act at D.C. Official Code § 44-505.

11005 LICENSE ISSUANCE AND FEE

11005.1 No person may establish or operate an ASF without obtaining a license from the Director.

11005.2 The following states the applicable initial license fee based on the number of operating rooms or surgical stations maintained by the ASF:

<u>Number of Operating Rooms/Surgical Suites</u>	<u>Initial Fee</u>
1	\$1500.00
2	\$2000.00
3 or More	\$3500.00

11004.3 Applications for renewal licenses shall be accompanied by the applicable license renewal fee as follows: \$1000 plus \$200 per operating room/surgical suite maintained by the licensee equaling a maximum of \$1600, plus a late fee, if applicable.

<u>Number of Operating Rooms/ Surgical Suites</u>	<u>Renewal Fee</u>	<u>Late Fee</u>
1	\$1200.00	\$120.00
2	\$1400.00	\$140.00
3 or More	\$1600.00	\$160.00

11005.4 Each application for a license or license renewal shall be accompanied by the appropriate license fee.

- 11005.5 Every license shall state the name and address of the ASF, the number of surgical suites and recovery rooms of the ASF, the period of licensure of the ASF, and the services the ASF provides.
- 11005.6 Each license shall be returned to the Director immediately upon change of ownership or voluntary cessation of services or when the license is suspended or revoked.
- 11005.7 Each license shall be renewed annually in accordance with 22-B DCMR §§ 3110 and 3104.
- 11005.8 An ASF shall submit an application for licensure renewal and the application fee to the Director no later than ninety (90) days before the expiration date of the current license.

11006 ADMINISTRATION AND OPERATION

- 11006.1 The ASF must have a governing body that sets policy and assumes full legal responsibility for the operation of the ASF.
- 11006.2 The responsibilities of the governing body shall include the following:
- (a) Determining the mission, goals, and objectives of the ASF;
 - (b) Ensuring that facilities and personnel are adequate and appropriate to carry out the mission;
 - (c) Establishing an organizational structure and specifying functional relationships among the various components of the ASF;
 - (d) Adopting written bylaws and written policies for the orderly operation, development and management of the ASF;
 - (e) Ensuring that the quality of care is evaluated and that problems are identified and addressed;
 - (f) Reviewing all legal and ethical matters concerning the ASF and its staff and, when necessary, responding appropriately;
 - (g) Maintaining effective communication throughout the ASF;
 - (h) Establishing a system of financial management and accountability that includes an audit appropriate to the ASF;

- (i) Developing, implementing, and enforcing written policies on the rights of patients;
- (j) Approving all major contracts or arrangements affecting the medical care provided, including, but not limited to, those concerning:
 - (i) The employment of health care practitioners;
 - (ii) Effective procedures and agreements with a local hospital for transfer of patients if necessary in an emergency or for care beyond the capability of the ASF;
 - (iii) The use of external laboratories;
 - (iv) An effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services if laboratory, X-ray, and pharmacy services are not provided on site; and
 - (v) The provision of education to students and postgraduate trainees if the ASF participates in such programs;
- (k) Formulating long-range plans in accordance with the mission, goals, and objectives of the ASF;
- (l) Assuring that all marketing and advertising concerning the ASF are truthful and do not imply that it provides care or services which it does not or cannot provide;
- (m) Developing a system of risk management appropriate to the ASF including, but not limited to:
 - (i) Periodic review of all litigation involving the ASF, its staff, and health care practitioners regarding activities in the ASF;
 - (ii) Periodic review of all incidents reported by staff and patients;
 - (iii) Review of all deaths, trauma, or adverse reactions occurring on the premises;
 - (iv) Evaluation of patient complaints;
- (n) Providing for the initial appointment, reappointment, assignment or the curtailment of privileges and practice for physicians and non-physicians; and

- (o) Developing policies and procedures on reporting unusual incidents to the licensing agency which included events that result in death, wrong-site surgery, accidents, injury drug error, abuse or neglect.
- 11006.3 An ASF shall have a formal organizational plan with written by-laws, rules and regulations or their equivalent that clearly set forth the organization of the ASF, and the duties, responsibilities, accountability and relationships of professional staff and other personnel.
- 11006.4 The by-laws, rules and regulations, or their equivalent, shall include at least the following information about the ASF:
 - (a) A statement of its purpose, mission and goals;
 - (b) A description of the functions and duties of its governing body;
 - (c) A statement of authority and responsibility delegated to its administrator and medical staff; and
 - (d) Provision of guidelines for relationships among its governing body, administrator, and medical staff.
- 11006.5 An ASF governing body shall meet at least annually and keep minutes or records as necessary for the orderly conduct of the ASF.
- 11006.6 If an ASF's governing body elects, appoints or employs officers to carry out any of its directives, the authority, responsibility and functions of all such positions shall be clearly defined and maintained in writing.
- 11006.7 The responsibility for the daily administration and management of the ASF shall be vested in an administrator, who shall be appointed by the governing body, and whose qualifications, authority and duties shall be defined in a written statement adopted by the governing body. The administrator's duties shall include:
 - (a) Implementing the facility's policies and coordinating the provision of services;
 - (b) Organizing and coordinating administrative functions;
 - (c) Establishing procedures for the accountability of personnel involved in patient care;
 - (d) Training staff on the facility's policies and procedures, and on applicable local and federal law;

- (e) Participating in the development of organizational and fiscal planning for the ASF;
 - (f) Participating in the development, negotiation and implementation of agreements or contracts to which the ASF is a party;
 - (g) Ensuring that all personnel receive orientation and have sufficient experience to perform the duties of the job for which they were hired; and
 - (h) Ensuring that all personnel are licensed or certified as appropriate under District law.
- 11006.8 The administrator, in consultation with other professional staff as necessary, including but not limited to the medical and nursing directors, shall develop and implement policies and procedures governing the operation of the facility.
- 11006.9 The administrator shall ensure that policies and procedures are reviewed by staff at least annually and revised as necessary. The governing body shall approve all policies and procedures and any revisions thereto.
- 11006.10 The ASF is required to develop and implement policies regarding the following:
- (a) Policies that establish the type, scope and delivery of services provided by the ASF either directly or through contractual arrangements;
 - (b) Policies regarding the granting of clinical privileges to physicians, podiatrists, physician assistants and advanced practice nurses in accordance with Section 8 of the Act (D.C. Official Code § 44-507);
 - (c) Personnel policies delineating functional responsibility, authority and job descriptions, requirements for appropriate licensure, and the specific responsibilities and privileges of employment;
 - (d) Required methods of communication to be used among personnel to provide for the orderly flow of information;
 - (e) The types of anesthesia that may be used;
 - (f) Admissions and discharge policies, including criteria for evaluating the patient before admission and at discharge, and providing aftercare plans;
 - (g) The protocols for providing surgical and medical care in emergencies;
 - (h) The preoperative testing and postoperative recovery and care;

- (i) The proper handling of pharmaceuticals;
- (j) The appropriate transfer and referral of patients who require emergency services or services not provided by the facility;
- (k) The required written informed consent of the patient prior to any medical procedure;
- (l) The maintenance, disposal and transport of medical waste and pharmaceuticals;
- (m) The maintenance of equipment to ensure proper safety and operation;
- (n) The regulation of the use, removal, handling and storage of any radioactive material;
- (o) The precautions against electrical, mechanical and radiation hazards;
- (p) The safe storage and use of anesthetics and medical gases;
- (q) Patient rights; and
- (r) Infection control.

11006.11 The administrator shall ensure that the written policies and procedures are available at all times for staff inspection and use, and that appropriate personnel implement all policies and procedures as adopted.

11006.12 All written policies and procedures shall be made available to the Director upon request.

11007 PERSONNEL

11007.1 The administrator shall ensure that all personnel:

- (a) Have sufficient documented experience to demonstrate competency to perform assigned duties, and
- (b) Are licensed and certified by all appropriate licensing boards to practice in the District, if required by law;
- (c) Comply with criminal background check requirements (D.C. Official Code § 44-551), and all applicable federal and local employment laws;

- (d) Have malpractice insurance, if applicable;
 - (e) Practice in accordance with applicable state and federal law and conform to the standards and ethics of their profession;
- 11007.2 Each employee, prior to employment and once every two (2) years thereafter, shall provide a physician's certification that a health inventory has been performed, and that the employee's health status would allow him or her to perform the required duties. The health inventory shall show either that the employee is free from any active communicable disease (including but not limited to tuberculosis), or that he or she is receiving follow-up care and active treatment that would prevent the communication of the disease.
- 11007.3 Each physician shall have a health examination performed by another physician or other qualified health care professional at the time of appointment and once every two (2) years thereafter;
- 11007.4 Preventative measures as well as testing and frequency of testing for tuberculosis shall be in accordance with standards and guidelines developed by the Centers for Disease Control and Prevention.
- 11007.5 A report, signed by an examining physician or other qualified health professional, shall be made of each examination.
- 11007.6 In lieu of a pre-employment intradermal tuberculin test, which shall be required to test for tuberculosis, the examining physician may accept a written report of the test or x-ray made by a qualified person within twelve (12) months prior to the date of the reexamination.
- 11007.7 Each person who is involved in direct patient care and who has been absent from duty because of an illness required to be reported to the Director in accordance with requirements related to communicable diseases shall, prior to returning to duty, obtain certification from a physician or other qualified health professional, as provided for in the ASF's policies, that he or she may return to duty without apparent danger of transmitting the cause of the illness to any patient.
- 11007.8 A copy of each health certification that is required in this chapter shall be kept on file in each employee's personnel record and made available for examination by the Director.
- 11007.9 Immunization against communicable disease shall be required of all employees and all other persons who routinely come in contact with patients or patient areas. Immunizations shall be in accordance with current standards and guidelines developed by the Centers for Disease Control and Prevention.

- 11007.10 The administrator shall ensure that the ASF has a sufficient number of qualified staff to ensure the safe operation of the ASF in accordance with nationally accepted standards of practice.
- 11007.11 The administrator shall ensure that the ASF has on file job descriptions for all personnel.
- 11007.12 The administrator shall ensure that each employee sign an employment agreement, an offer letter or job description, and maintain copies of each signed document on file. The administrator shall also ensure that a current copy of any required license, or a printout from a professional licensing website, is maintained in each file.
- 11007.13 The ASF shall notify the Director in writing within thirty (30) days of any personnel changes in the medical director, nursing director, or administrator positions.
- 11007.14 The administrator shall ensure that all personnel are provided with orientation and training to familiarize them with the ASF's policies, procedures, and facilities.
- 11007.15 Credentials including education and experience, certifications, licenses, and registrations, shall be reviewed and verified for every person providing medical services.
- 11007.16 Clinical privileges for each such person shall be clearly defined in writing, and a written copy of the clinical privileges for each person shall be kept in each person's personnel file.
- 11007.17 The ASF shall have a formal written credentialing process for physicians, dentists and podiatrists. As part of the credentialing process, the administrator, in consultation with the medical director, shall collect, review and document the following information:
- (a) The physician's, dentist's and podiatrist's education, professional experience, board certifications and post-graduate training;
 - (b) Any licenses or registrations to practice a health occupation;
 - (c) Any suspensions or revocations of any health occupation license;
 - (d) The name of any hospital where any dentist, podiatrist and physician on staff was employed, the number of years worked there, any privileges held, and any disciplinary actions taken or voluntary surrenders;

- (e) The name of all professional liability insurance carriers for the past five years and documentation regarding the current carrier; current limits on coverage; current types of coverage; and any restrictions on coverage;
- (f) Any claims made against the dentist, podiatrist, or physician in the last five years, and the status of that claim;
- (g) Reasonable efforts taken by the ASF to identify any physical or mental condition that currently impairs the physician's, dentist's, or podiatrist's ability to exercise privileges; and
- (h) Any data on the dentist, podiatrist or physician in the National Practitioners Databank.

11007.18 The administrator shall establish a procedure for the reappointment of any physician, podiatrist, or dentist at least biannually, and shall consider the factors in Subsections 11005.7 and 11005.9 upon reappointment.

11007.19 The performance of any person on staff who provides medical services shall be evaluated at least annually, with regard to the following:

- (a) The medical service provider's involvement in any complaints against the ASF;
- (b) Malpractice claims filed against the medical service provider;
- (c) Adherence to policies, bylaws and procedures; and
- (d) Any assessments made through the quality assurance program.

11007.20 Whenever a licensed health-care professional is terminated as a result of a job-related incident, the ASF shall refer a report of the incident to the appropriate professional health-care board which shall review the report in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*).

11008 MEDICAL SERVICES GENERALLY

11008.1 All medical services performed in the ASF shall be limited to those procedures that are approved by the governing body upon the recommendation of qualified medical personnel. Surgical procedures to be performed in the ASF shall be reviewed periodically as part of the peer review portion of the ASF's quality assurance program.

11008.2 Medical services shall be supervised by a medical director, who shall be responsible for the quality of medical services, the overall medical care provided

by the ASF, and for providing advice and consultation with facility staff on all medical issues relating to the services provided by the facility.

- 11008.3 The medical director shall:
- (a) Develop written protocols for the management of surgical patients and emergency situations; staffing and supervision of surgery;
 - (b) Have all such protocols approved by the governing body;
 - (c) Make such protocols available on site at all times for reference;
 - (d) Review the protocols at least annually and revise them as necessary; and
 - (e) Obtain approval of revisions by the governing body.
- 11008.4 At least one physician shall be present at the ASF whenever medical services are provided until all patients have been discharged.
- 11008.5 Licensed nurses and other personnel assisting in the provision of medical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the medical care provided.
- 11008.6 No medication or treatment shall be given except on the signed order of a person lawfully authorized to order treatment or medication. Emergency telephone and other verbal orders shall be signed within a reasonable time not to exceed forty-eight (48) hours by the person giving the order or, when such person is not available, cosigned by another physician or other person authorized to give the order.
- 11008.7 Only physicians and registered nurses shall administer blood and blood products.

11009 SURGICAL SERVICES

- 11009.1 Each ASF shall provide adequate supervision of all services offered and provided at the facility.
- 11009.2 Protocols for the implementation of surgical services shall include but not be limited to: personnel, preoperative testing and examinations, surgical procedures, post-anesthesia care and evaluation, discharge planning, emergency care, informed consent, and safety.
- 11009.3 Surgical procedures shall be performed by a physician, podiatrist or dentist licensed to perform such procedures in the District who has been granted privileges to perform such procedures after review of the practitioner's documented education, training, experience and competence.

- 11009.4 An appropriate physical history, physical examination, and pertinent preoperative diagnostic studies, including a pre-anesthesia evaluation, shall be incorporated into the patient's medical record prior to surgery.
- 11009.5 Sufficient time shall be allowed between any examination, testing or studies and any procedure to permit the reporting and review of the exam, testing or studies by the responsible physicians. Where medical evaluation, examination, and referrals are made from a private physician's office, or another hospital, clinic or medical service, pertinent records therefrom shall be obtained and incorporated into the patient's medical record at the time the patient is admitted to the ASF.
- 11009.6 In an ASF that provides abortion services, documentation of verification of pregnancy and the length of the gestation period shall be the responsibility of the physician performing the abortion procedure.
- 11009.7 If any of the assessments required in Subsection 11007.4 are performed before the day of surgery, a qualified health practitioner shall on the day of surgery reassess and document any change in the patient's clinical status that could have an effect on the surgical procedure to be performed and the anesthesia to be used.
- 11009.8 The necessity or appropriateness of any proposed surgery, as well as the availability of any alternate treatment, shall be discussed with the patient prior to scheduling the patient for surgery.
- 11009.9 A description of the findings and techniques of an operation shall be accurately and thoroughly written up immediately and placed in the patient's medical record or dictated immediately after the procedure by the practitioner who performed the procedure. If the description was dictated, an accurate written summary shall be immediately available to the health care practitioners providing care and become part of the patient's medical record.
- 11009.10 A safe environment for treating surgical patients, including adequate safeguards to protect the patient from cross-infection, shall be provided by the provision of adequate space, equipment and personnel.
- 11009.11 Each patient shall be evaluated for post-operative complications under the direct supervision of a physician.
- 11009.12 Written protocols shall be established for instructing patients in self-care after surgery.

11010 ALLOWABLE SURGICAL PROCEDURES

- 11010.1 In accordance with Section 5(h) of the Act, and with the exception of Subsection 11009.2 of this chapter, this section lists outpatient surgical procedures which, if

not performed in a hospital or, when appropriate, a maternity center, may be performed only in a facility licensed as an ambulatory surgical facility.

- 11010.2 Where a procedure on the list is a service, treatment or examination that is commonly ancillary to a surgical procedure, it may be provided in a licensed ambulatory surgical facility; however, a licensed health care professional or entity that provides such ancillary service(s), treatment(s) or examination(s) is not required to be licensed as an ambulatory surgical facility unless the health care professional or entity is otherwise defined as an ambulatory surgical facility in accordance with Section 11099 of this chapter.
- 11010.3 Allowable outpatient surgical procedures shall be in accordance with this section and may include procedures wherein the tissue is cut, burned, vaporized, frozen, sutured, probed or manipulated by closed reductions for major dislocations or fractures, or otherwise altered by mechanical, thermal, light-based, electromagnetic, or chemical means.
- 11010.4 Allowable outpatient surgical procedures in the District are those procedures listed as “Final ASC Covered Surgical Procedures” by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). See also Title 42, § 416.166 Code of Federal Regulations (42 CFR § 416.166).
- 11010.5 The list of allowable outpatient surgical procedures is extensive and is updated quarterly at the end of the months of January, April, July and October.
- 11010.6 The list of allowable outpatient surgical procedures appears on the website of CMS and can be accessed as follows;
- (a) Go to http://www.cms.gov/apps/ama/license.asp?file=/ascpayment/downloads/Jan_2012_ASC_addenda_extenders.zip
 - (b) Click “Accept” at bottom of page;
 - (c) “File Download” appears. Click “Open”; and
 - (d) Allowable outpatient surgical procedures are listed in the first column, entitled “Addendum AA”.
- 11010.7 Instructions for access to the website are also published on the D.C. Department of Health (DOH) website by following the link to “Health Regulation and Licensing Administration”, then “Health Care Facilities”.
- 11010.8 Any change in format of the website or instruction for accessing the website shall be published on the DOH website by following the link to “Health Regulation and Licensing Administration”, and then “Health Care Facilities”.

11011 NURSING SERVICES

- 11011.1 Each ASF shall retain a sufficient number of nurses qualified to provide the nursing services necessary for the type of care the ASF provides in keeping with generally accepted nursing standards of practice.
- 11011.2 The number and type of nursing personnel, including registered nurses, licensed practical nurses, and supplementary staff, shall be based upon the needs of the patients and types of services performed, and shall be documented in writing in the ASF's policies and procedures.
- 11011.3 Nursing services shall be under the direction of a nursing director, who shall be a registered nurse licensed in the District and who shall be responsible for the quality of nursing services.
- 11011.4 At least one registered nurse with current certification in basic life support shall be on duty at all times when the ASF is in use and whenever a patient is on the premises.
- 11011.5 There shall be a written plan of administrative authority for all nursing services addressing responsibilities and a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.
- 11011.6 A registered nurse shall assign nursing care of patients to other personnel in accordance with patient needs and the qualifications of available nursing staff.
- 11011.7 Recovery room nurses shall have specialized training in resuscitation techniques and other emergency procedures consistent with policies and procedures of the ASF for designated special units.

11012 ANESTHESIA SERVICES

- 11012.1 Anesthesia services provided by the ASF shall be limited to those that are approved by the ASF governing body.
- 11012.2 Anesthesia services shall be provided under the direction of a physician, who is approved by the governing body, licensed in the District of Columbia, and responsible for the supervision of all persons administering anesthesia, the review of all anesthesia complications, and the development and implementation of policies and procedures related to anesthesia care in consultation with medical staff.
- 11012.3 The supervisory physician shall, in conjunction with medical staff, develop written guidelines for the anesthesia service provided by the ASF, which shall be approved, implemented and enforced by the governing body which must take into

account the applicable standards and guidelines of the American Society of Anesthesiologists, the American Association of Nurse Anesthetists, and the licensing rules and standards applicable to those categories of licensed professionals qualified to administer anesthesia.

- 11012.4 The following practitioners may administer anesthesia in accordance with their education and training:
- (a) An anesthesiologist;
 - (b) A physician, dentist, podiatrist or an oral surgeon who is qualified under District law and has education, training and experience in the type of anesthesia being administered; and
 - (c) A certified registered nurse anesthetist practicing in accordance with rules and regulations promulgated by the D.C. Board of Nursing, 17 DCMR Chapter 57.
- 11012.5 Medications for conscious sedation may be administered by a registered nurse in accordance with the requirements set out by the Board of Nursing.
- 11012.6 If anything other than an un-supplemented local anesthetic is needed to accomplish a surgical procedure, the practitioner providing anesthesia shall conduct a pre-anesthesia evaluation and document in the patient's clinical record the anesthetic risk to the patient, but if the assessment was performed prior to the day of surgery, a qualified health professional shall on the day of surgery reassess and document any changes in the patient's clinical status that could have an effect on the surgical procedure to be performed and the anesthesia to be used.
- 11012.7 The person administering the anesthesia shall ensure that the patient's condition is documented during the procedure, at recovery, and at discharge, and such documentation shall be incorporated into the patient's clinical record.
- 11012.8 Patients who have received anesthesia shall be evaluated for proper recovery by the operating surgeon or the person who administered the anesthesia prior to discharge.
- 11012.9 Before discharge from the ASF, each patient shall be evaluated by a physician or anesthetist for proper anesthesia recovery.
- 11012.10 Patients shall be discharged in the company of a responsible adult, except when the attending physician otherwise exempts a patient from this requirement. The exemption shall be documented in writing and shall be part of the patient's clinical record and discharge planning.

- 11012.11 Emergency equipment and supplies appropriate for the type of anesthesia services provided shall be properly maintained and made easily accessible to staff at all times.
- 11012.12 Functioning equipment and supplies which are required for each ASF shall include:
- (a) Suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;
 - (b) A source of compressed gases;
 - (c) Basic airway management equipment, including oral and nasal airways, face masks and self-inflating breathing bag valve sets;
 - (d) Vital signs blood pressure monitoring equipment; and
 - (e) Emergency medications specified by the medical staff and appropriate to the type of surgical procedures and anesthesia services provided by the ASF.
- 11012.13 In addition to the equipment and supplies required above, each ASF that provides moderate sedation/analgesia, deep sedation/analgesia, regional analgesia and/or general anesthesia shall provide the following:
- (a) Intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;
 - (b) Advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes and stylets in appropriate sizes for the population being served;
 - (c) A mechanism for monitoring blood oxygenation, such as pulse oximetry;
 - (d) Electrocardiographic monitoring equipment;
 - (e) A cardiovertor-defibrillator; and
 - (f) Pharmacologic antagonists as specified by the medical staff and appropriate to the type of anesthesia services provided.
- 11012.14 There shall be written procedures on site, approved by the physician identified in Subsection 11012.2, for the safe storage and use of inhalation anesthetics and medical gases.

11013 PHARMACEUTICAL SERVICES

- 11013.1 The ASF shall provide drugs and biologics in a safe and effective manner in accordance with professional practices and in compliance with all District and federal laws and regulations. The ASF shall be licensed as required by the Pharmaceutical Control Division of the Health Regulation and Licensing Administration, and shall comply with all applicable pharmaceutical services regulations.
- 11013.2 The medical director or his or her licensed designee shall be responsible for the provision of pharmaceutical services in compliance with applicable District of Columbia and federal regulations.
- 11013.3 Pharmaceutical services may be made available by the ASF through a contractual agreement that requires services be provided in accordance with the same ethical and professional practices and legal requirements that would be required if the ASF were providing the service.
- 11013.4 Each ASF shall obtain a criminal record check in accordance with 22-B DCMR Chapter 47 for any compensated employee not licensed by the Board of Pharmacy whose job it is to provide access to controlled substances within the ASF.
- 11013.5 Drugs shall only be provided under the direction of an authorized prescriber.
- 11013.6 Staff shall prepare and administer drugs in accordance with ASF policies and procedures and acceptable standards of practice.
- 11013.7 Adverse reactions to drugs shall be reported immediately to the patient's health care practitioner and documented in the patient's medical record.
- 11013.8 Any oral drug order from a practitioner shall be immediately reduced to writing and signed by the authorized practitioner prescriber within forty-eight (48) hours and shall provide the following:
- (a) The full name of the prescriber;
 - (b) The date and time of the order;
 - (c) The full name and strength of the drug, directions for use; and
 - (d) The name of the practitioner who received the verbal order.
- 11013.9 Each ASF providing pharmaceutical services shall comply with the following requirements:
- (a) Drugs shall be obtained from suppliers licensed or registered as required by federal and District law;

- (b) A current and complete list of all medications in inventory shall be maintained by the ASF
- (c) All areas where drugs are stored shall be dry, well lighted, well ventilated, maintained at a temperature safe for the storage of drugs as specified by the United States Pharmacopoeia/National Formulary (USP/NF) or the United States Food and Drug Administration (USFDA) and maintained in a clean and orderly condition;
- (d) Drug storage areas shall be maintained at temperatures which will ensure the integrity of the drugs prior to their use as stipulated by the United States Pharmacopoeia/National Formulary (USP/NF) and/or the manufacturer's or distributor's labeling unless otherwise indicated by the Pharmaceutical Control Division;
- (e) Each ASF shall provide refrigeration facilities exclusively for the storage of drugs requiring cold storage with a thermometer controlling the interior temperature to keep it maintained between thirty-six degrees Fahrenheit (36°F) and forty-six degrees Fahrenheit (46°F);
- (f) The drug storage area shall be separately enclosed and secured, or shall be located within a decentralized automated medication system (as defined at 22-B DCMR 1999) in such a manner as to prevent diversion and unauthorized access;
- (g) Access to the drug storage area shall be limited to persons who require entry for the purpose of discharging a job-related duty and to persons legally entitled to engage in inspection, enforcement or other regulatory duty;
- (h) Medications shall not be kept or displayed in an area that is accessible to the public;
- (i) Each ASF shall maintain current drug information reference sources consistent with the scope of practice at the location of the ASF;
- (j) Each ASF shall define procedures for proper management of drug recalls which may include, where appropriate, contacting patients to whom the recalled drug product(s) has been dispensed;
- (k) Each ASF shall ensure that discontinued and outdated drugs, and containers with worn, illegible or missing labels are maintained separately from current drug stock;

- (l) Each ASF shall develop and implement policies and procedures for disposal of drugs that is in compliance with District and Federal laws;
- (m) Medications designated as high alert medications as defined by standard setting bodies, such as Joint Commission and the Institute for Safe Medication Practices, shall be stored, handled and administered with precautions and safeguards consistent with the standards of practice associated with these medications;
- (n) Medications in multi-use vials shall base beyond-use dating on the stability information available from the manufacturer or other published studies using the same pharmaceutical contents. In the absence of stability information, the beyond-use date can be determined as follows:
 - (i) For non-aqueous liquids and solids made using commercially manufactured products, the beyond-use date shall be no greater than twenty-five percent (25%) of the time remaining on the commercial product or a maximum of six months, whichever is less;
 - (ii) For aqueous solutions made from solids obtained from commercially manufactured drug products, the beyond-use date is fourteen (14) days when stored at a cold temperature; and
 - (iii) For all other formulations, the beyond-use date is not later than the intended duration of therapy or thirty (30) days, whichever is earlier.

11013.10 ASFs providing pharmaceutical services shall comply with the following with respect to controlled substances:

- (a) Controlled substances shall be ordered by the DEA registrant or licensed person noted on a delegation of authority;
- (b) Only designated, licensed health care persons who are authorized by written facility policy to handle controlled substances shall have access to controlled substances;
- (c) Schedule II controlled substances shall be ordered using a DEA-222 form or electronic equivalent;
- (d) Upon receipt of Schedule II Controlled Substances, the DEA 222 form must be properly executed to reflect the date and quantity of the substance and it must be initialed by the receiver;

- (e) Invoices for controlled substances shall be filed separately from other invoices, shall be readily retrievable and maintained for five (5) years;
- (f) A separate double locked cabinet, a permanently affixed compartment box or drawer within a locked cabinet, or a decentralized automated medication system (as defined at 22-B DCMR § 1999) shall be used for the storage of each substance that is controlled by the D.C. Uniform Controlled Substance Act, effective August 5, 1981 (D.C. Law 4-29; D.C. Code Official Code §§ 33-501 *et seq.*), and for other drugs subject to abuse;
- (g) A perpetual inventory of all controlled substances shall be completed daily and must be signed by a person authorized to handle the controlled substances. The perpetual inventory must be documented in a separately maintained log book or similar recordkeeping instrument;
- (h) Any discrepancies in inventory must be reconciled immediately;
- (i) A complete inventory of controlled substances must be taken at a minimum of every (2) two years. This inventory shall be identified as the biennial inventory, shall be signed and dated by the authorized handler, and shall indicate the time when the inventory was taken;
- (j) All thefts, losses and unusual occurrences must be reported to the Pharmaceutical Control Division within forty-eight (48) hours of discovery;
- (k) A DEA Theft/Loss Report (Form 106) must be completed in the event of theft or loss of a controlled substance and a copy of the Form 106 must be filed with the DEA and the Pharmaceutical Control Division;
- (l) Controlled substances records must be maintained for five (5) years, with the most recent two (2) years maintained on the premises and the last three (3) years kept off-site and retrievable within three (3) business days; and
- (m) Controlled substance disposal shall be handled in accordance with District and Federal Pharmaceutical Waste Disposal laws and regulations.

11013.11 An ASF shall maintain a complete and accurate record of all drugs received, administered or otherwise disposed of, for a period of five (5) years; the most recent two (2) years of records shall be maintained on site and the remaining three (3) years of records may be maintained off site as long as the records can be retrieved within three (3) business days of a request.

11013.12 An ASF shall develop, maintain and implement procedures set forth in a policy and procedure manual for pharmaceutical services that will be reviewed annually.

11013.13 The medical director or designee shall inspect any areas where medications are stored and maintained quarterly and make appropriate written records and notations of those inspections as part of a Quality Assurance Program.

11014 RADIOLOGY AND X-RAY SERVICES

11014.1 Radiology and x-ray services shall be provided and made available when appropriate to meet the needs of the patients to adequately support the ASF's clinical capabilities.

11014.2 Radiological and x-ray services may be obtained by the ASF through a contractual agreement as long as the parties to the contract are bound by the same ethical and professional practices and legal requirements that would be required of the ASF if it were providing the service.

11014.3 A radiologist shall authenticate all examination reports, except reports of specific procedures that may be authenticated by physicians who have been granted privileges by the governing body or its designee to authenticate such reports and all reports shall be made a part of the patient's medical record.

11014.4 Radiology and x-ray services shall be provided only upon the written order of a physician, dentist, advanced practice nurse or other authorized healthcare practitioner (such orders must be accompanied by a concise statement of the reason for the service).

11014.5 The ASF shall limit the use of any radioactive sources to physicians who have been granted privileges for such use on the basis of their training, experience and current competence.

11014.6 Radiographic equipment shall be licensed in accordance with applicable federal and local requirements.

11014.7 The ASF shall develop and implement safety programs, requirements for education, credentialing and training of personnel, and a requirement that all personnel working with radiographic equipment be adequately trained in the safety and use of all equipment.

11015 PATHOLOGY AND CLINICAL LABORATORY SERVICE

11015.1 Laboratory facilities shall be approved under the Clinical Laboratory Improvement Act of 1988, effective March 16, 1989, as amended (D.C. Law 7-182; D.C. Official Code §§ 44-201, *et seq.*) (CLIA), and any other federal or local laws as applicable.

11015.2 Pathology and clinical laboratory services shall be provided as follows:

- (a) By limiting laboratory procedures to those that are appropriate to the needs of the patients;
- (b) By performing tests in a timely manner;
- (c) By distributing routine and non-critical test results within twenty-four (24) hours after completion of a test and maintaining a copy of the results in the laboratory; and
- (d) By performing and documenting appropriate quality assurance procedures, including but not limited to, instrument maintenance and quality control testing, and validating test results through use of standardized control specimens or laboratories.

11015.3 Preoperative laboratory procedures shall be provided as follows:

- (a) At the discretion of the Medical Director or the governing body in accordance with preoperative laboratory orders by the medical staff;
- (b) Any discretion exercised shall be consistent with standard medical practice; and
- (c) Upon the order of a physician, podiatrist, dentist, or advanced practice registered nurse and written on the patient's chart.

11015.4 Clinical or laboratory services shall be provided either directly by the ASF or through a contract arrangement with a reference laboratory.

11015.5 The contractual agreement with the reference laboratory shall provide for routine and stat work including pathology, clinical, and blood bank services, if blood is authorized by the ASF, and shall be available for review.

11015.6 The patient may be instructed to go directly to the reference laboratory, or the specimen may be collected on the ambulatory surgical center's premises and then the patient may be referred to the Medicare-approved reference laboratory.

11015.7 For laboratory tests not performed on the premises the following shall be maintained and shall be readily available for inspection during the retention period:

- (a) Procedures and policies governing the approved reference laboratory specimen requirements; identification, collection, labeling, storage, and transportation of the specimen, and preventive maintenance of equipment used in processing and storage of specimen; and

- (b) A log book or electronic documentation which shall include patient name and identification number, doctor's name, date the specimen was drawn and sent to the Medicare-approved reference laboratory, laboratory tests ordered, date the final report came back from the reference laboratory, and condition of the specimen.
- 11015.8 The final report on laboratory tests shall be in the patient's chart, with copies kept in the ASF's laboratory.
- 11015.9 For laboratory tests performed on the premises, the following shall be maintained:
- (a) Procedures governing identification, collection, labeling, and storage of specimens;
 - (b) A log book, which shall include patient name and identification number, practitioner's name, date the specimen was drawn, tests ordered, and results;
 - (c) Procedures for each test performed by the laboratory, including source of reagents, standards, and calibration procedures, and information concerning the basis for the tested normal ranges;
 - (d) Procedures and documentation of performed maintenance on equipment used to process laboratory work;
 - (e) Dated reports of all examinations performed and made a part of the patient's medical record; and
 - (f) Proficiency testing as appropriate for the type of testing performed.
- 11015.10 Quality control of the laboratory, contract services of a reference laboratory and the complete analytic process for each test performed shall be monitored through the quality assurance committee.
- 11015.11 The ASF may allow laboratory work to be performed and brought in from other CLIA-certified laboratories or practitioners' offices, and reports from such laboratories or practitioners shall be included in the patient's charts before surgery.
- 11015.12 The medical staff shall develop, and the governing body shall approve, written criteria describing the length of time tests may be performed prior to surgery.
- 11015.13 Laboratory work shall be performed in a reference laboratory or in the patient's healthcare practitioner's office as specified in written ASF policy.

11015.14 If the ASF performs surgery which incorporates the removal of a tissue specimen or the freezing of a tissue specimen, the specimen shall be submitted to a reference laboratory.

11015.15 Pathology tissue reports and positive cytology reports shall have the authorized signature of the pathologist interpreting the report.

11016 MEDICAL WASTE AND HANDLING OF TISSUE

11016.1 Each ASF shall dispose of medical waste in accordance with Section 3 of the Illegal Dumping Enforcement Act of 1994, effective November 20, 1993, as amended (D.C. Law 12-90; D.C. Official Code § 8-902).

11016.2 Each ASF shall maintain and store tissue and waste in accordance with Subsection 11004.9(l) of this chapter.

11017 DISCHARGES

11017.1 Each ASF shall have a program to provide discharge planning to patients.

11017.2 Discharge planning shall include the following:

- (a) A system for timely evaluation of any discharge planning needs of patients;
- (b) Identification of staff responsible for the program;
- (c) Development of a discharge plan, including medication review, with the patient or representative when a need is identified;
- (d) Provision of documentation regarding follow-up care, medication review with the patient or representative, and whether the patient must be discharged with an escort;
- (e) Contact information in the event of an emergency or complications; and
- (f) Maintenance of a complete and accurate list of community-based services, resources and facilities to which patients can be referred.

11018 PATIENT RIGHTS

11018.1 The ASF shall have written protocols for ensuring patient rights.

11018.2 Patients shall be treated with respect, consideration and dignity.

11018.3 Patients shall be provided with adequate privacy.

- 11018.4 Patient records shall be treated confidentially and shall be released only with consent of the patient or designee or as permitted by law.
- 11018.5 Patients shall be provided known appropriate information concerning their diagnosis, treatment and prognosis. When it is medically inadvisable to provide such information to the patient, the information shall be provided to an authorized representative.
- 11018.6 Patients have the right to participate in decisions involving their health care, except when such participation is contraindicated for medical reasons.
- 11018.7 Patients shall have the right to refuse to participate in experimental research.
- 11018.8 Information shall be available to patients and staff concerning:
- (a) Patient rights;
 - (b) Patient's conduct and responsibilities;
 - (c) Services provided at the ASF;
 - (d) Provisions for after-hours and emergency care;
 - (e) Fees for services;
 - (f) Payment policies;
 - (g) Patients' right to refuse to participate in experimental research; and
 - (h) Grievance procedures.
- 11018.9 Each Patient shall be given a written copy of his or her rights and responsibilities prior to or upon admission to the ASF.
- 11018.10 Patients shall be entitled to copies of their records upon request within ten (10) business days of the request.
- 11018.11 The ASF may charge a reasonable fee for the copying of records.

11019 PATIENT SAFETY GOALS

- 11019.1 Each ASF shall have a Patient Safety Program that shall ensure that the ASF complies with the National Patient Safety Goals published by the American Association for Accreditation of Ambulatory Surgical Facilities, the Accreditation Association for Ambulatory Health Care, the Joint Commission on Accreditation

of Healthcare Organizations or another accrediting body for ambulatory surgical facilities which is approved by the Director.

- 11019.2 The ASF must develop, adopt and implement an effective, on-going Patient Safety Program.
- 11019.3 A description of the Patient Safety Program must be in writing, approved by the governing body and made available for review by the Director.
- 11019.4 A description of the Patient Safety Program must include the following components:
- (a) The definition of medical errors, and adverse and reportable events;
 - (b) The process for internal reporting of medical errors and adverse and reportable events;
 - (c) A list of events and occurrences which staff are required to report internally;
 - (d) Time frames for internal reporting of errors and events;
 - (e) Consequences for failing to report events;
 - (f) Mechanisms for preservation and collection of data;
 - (g) The process for conducting and completing an investigation to determine the cause of the event;
 - (h) The requirement for development of an action plan within forty-five (45) days of the event or error, designed to reduce the risk of events or errors in the future;
 - (i) The process for communication of action plans; and
 - (j) The process for feedback to staff of root cause analyses and action plans.
- 11019.5 The ASF must make the root cause analysis and action plan available to the Director for review.
- 11019.6 The ASF must provide patient education and training to staff.
- 11019.7 Training must be provided on all components of the Patient Safety Program.
- 11019.8 The ASF must designate one or more individuals to be responsible for the management of the Patient Safety Program.

11020 QUALITY ASSURANCE PROGRAM

- 11020.1 The administrator shall ensure that the facility develops and maintains a quality assurance program.
- 11020.2 A quality assurance program shall include the following:
- (a) Identification and selection of appropriate staff and concomitant responsibilities for the program;
 - (b) Ongoing review of clinical responsibilities and authority;
 - (c) Peer review and supervision of all professional and technical activities;
 - (d) Monitoring and evaluation of the Patient Safety Program;
 - (e) Maintenance of medical records; and
 - (f) Quality controls for all diagnostic and other technical services provided.
- 11020.3 The professional and administrative staff shall understand and support the quality assurance program.
- 11020.4 Quality assurance activities shall be conducted by a Quality Assurance Committee, which is composed of members of the specific clinical disciplines within the ASF. The committee shall meet not less than quarterly.
- 11020.5 The ASF shall have a peer review process that shall include a mechanism to evaluate the clinical performance of each health care practitioner on a continuous basis, but not less than annually; and a written annual evaluation of each health care practitioner.
- 11020.6 The administrator shall ensure that the ASF develop a quality control procedure to monitor the safety and performance of all biomedical equipment consistent with Food and Drug Administration recommendations and the equipment manufacturer's recommendations.
- 11020.7 A written description of the ASF's quality assurance program shall be submitted with the initial application for licensure.
- 11020.8 The facility shall submit any changes to its quality assurance program at the time of renewal.

11021 EMERGENCY CARE

- 11021.1 Each employee shall be trained in emergency procedures, disaster plans and fire evacuation plans and credentialed in cardiopulmonary resuscitation.
- 11021.2 Each ASF shall maintain the ability to provide emergency services as necessary.
- 11021.3 An ASF shall have, at a minimum, the following equipment available in the operating rooms:
- (a) An emergency call system;
 - (b) Oxygen;
 - (c) Mechanical ventilator assistance, including airways;
 - (d) Manual breathing bags and ventilator;
 - (e) Cardiac defibrillator;
 - (f) Cardiac monitoring equipment;
 - (g) Tracheostomy set;
 - (h) Laryngoscopes and endotracheal tubes;
 - (i) Suction equipment; and
 - (j) Any other equipment and supplies specified by the medical director.
- 11021.4 Each ASF shall execute a written agreement with an ambulance service which ensures emergency transportation to a licensed general hospital.
- 11021.5 Each ASF shall execute a written agreement with a general hospital, no further than fifteen (15) minutes away, to ensure that any patient of the ASF shall receive needed emergency treatment.
- 11021.6 The written agreement shall be with a hospital capable of providing full surgical, anesthesia, clinical laboratory, and diagnostic radiology service on fifteen (15) minutes' notice and with a physician in the hospital available for emergency service at all times.
- 11021.7 Each ASF shall have written plans and procedures for emergency transfers, including a mechanism for notifying a hospital of a pending emergency transfer and a procedure for transferring any medical records.

11022 MEDICAL RECORDS

- 11022.1 The ASF shall maintain a complete, comprehensive and accurate medical record for each patient, and develop and maintain a system for the collection, processing, maintenance, storage, retrieval and distribution of patient medical records.
- 11022.2 The record or chart shall contain sufficient information to identify the patient, the diagnosis, any need for medical or surgical service.
- 11022.3 The record shall, as applicable, include the following:
- (a) Patient identification;
 - (b) Admitting information, including patient history and results of physical examinations;
 - (c) Signed consents;
 - (d) Confirmation of pregnancy, if applicable;
 - (e) Preoperative diagnostic studies (if any);
 - (f) Allergies;
 - (g) Physician orders;
 - (h) Laboratory tests and results;
 - (i) Anesthesia records;
 - (j) Operative records;
 - (k) Medications and treatments;
 - (l) Recovery room notes;
 - (m) Physician and nurse progress notes;
 - (n) Condition at the time of discharge;
 - (o) Patient instructions;
 - (p) Names of referral physicians or agencies;
 - (q) Discharge instructions; and
 - (r) Emergency contact numbers provided to patients.

- 11022.4 All relevant patient information shall be incorporated into the chart in a timely manner.
- 11022.5 Medical advice given to a patient by telephone shall be entered into a patient's record and signed by the person giving the advice.
- 11022.6 The content and format of medical records shall be uniform, except as otherwise required by law.
- 11022.7 All clinical information relevant to a patient shall be made available to all practitioners involved in the care of that patient.
- 11022.8 Entries shall be legible to clinical personnel and shall be accurate and completed promptly.
- 11022.9 When necessary for patient care, summaries or photocopies of the records of a patient who was treated elsewhere shall be obtained.
- 11022.10 All final tissue and abnormal cytology reports shall be signed by a pathologist.
- 11022.11 The ASF shall send a copy of the medical record with the patient upon referral to another health care provider or upon transfer to a hospital.
- 11022.12 Provisions shall be made for the safe storage of medical records or accurate and legible productions thereof.
- 11022.13 Storage of medical records shall be in compliance with the Health Insurance Portability and Accountability Act (42 U.S.C. §§ 1320d *et seq.*)
- 11022.14 All medical records shall be kept for a minimum of five (5) years.
- 11022.15 Records of minor patients shall be kept for five (5) years after the patient reaches the age of eighteen (18).

11023 PHYSICAL ENVIRONMENT

- 11023.1 The ASF shall meet all applicable guidelines of the Building Officials and Code Administrators, and all federal and local laws, ordinances and regulations for construction.
- 11023.2 The ASF shall meet all safety requirements of the National Fire Protection Association (NFPA) 101 "Life Safety Code 2000."
- 11023.3 Each operating room shall be designed and equipped so that the types of services provided can be performed in a manner that protects the lives and assures the physical safety of all persons in the area.

- 11023.4 Treatment rooms, including operating rooms, shall have a minimum clear floor area sufficient to permit removal of a patient by stretcher.
- 11023.5 A safe environment for treating patients, including adequate safeguards to protect each patient from cross-infection, shall be assured through the provision of adequate space, equipment and personnel.
- 11023.6 Provisions shall be made for the isolation or immediate transfer of persons with communicable diseases.
- 11023.7 All persons entering the operating room shall be properly attired.
- 11023.8 Acceptable aseptic techniques shall be used by all persons in the surgical area.
- 11023.9 Only authorized personnel shall be allowed in the surgical area.
- 11023.10 The ASF shall maintain suitable equipment for high-speed and routine sterilization that ensures that operating room materials are sterile.
- 11023.11 Performance records for all sterilizers shall be maintained for six (6) months.
- 11023.12 Operating rooms shall be appropriately cleaned before, during and after each operation.
- 11023.13 Illumination at the examination tables and in the surgical areas shall provide at least one hundred (100) foot candles of light.
- 11023.14 Emergency power adequate for the types of surgery performed shall be available in the operative and post-operative areas in accordance with NFPA 99, NFPA 101 and NFPA 110.
- 11023.15 All parts of the ASF and its premises shall be kept clean and neat and free of litter and rubbish.
- 11023.16 Hazardous cleaning solutions, compounds and substances shall be labeled, stored in a safe place, and kept in an enclosed section separate from other materials.
- 11023.17 Adequate space shall be provided for accumulated waste.
- 11023.18 Waste, including all contaminated sharps, dressings or similar infectious waste, shall be disposed of in a manner compliant with the Occupational Safety and Health Administration and Centers for Disease Control guidelines.

- 11023.19 Each ASF shall make provisions for the cleaning of all linens in accordance with Centers for Disease Control and Prevention Guidelines on Healthcare-associated Infections.
- 11023.20 There shall be separate areas for the storage and handling of clean and soiled linens.
- 11023.21 All soiled linens shall be placed in closed containers prior to transportation.
- 11023.22 Adequate provisions shall be maintained for the processing, sterilizing, storing and dispensing of clean and sterile supplies and equipment.
- 11023.23 Written procedures shall be established for the appropriate disposal of pathological and other potentially infectious waste and supplies.
- 11023.24 The ASF shall comply with all guidelines for infection control promulgated by the Association for Professionals in Infection Control and Epidemiology, Inc.
- 11023.25 The ASF shall ensure that all medical equipment operates in accordance with the manufacturer's standards, and shall perform preventative maintenance in accordance with the manufacturer's recommendations and generally accepted standards.
- 11023.26 All equipment shall be periodically tested as appropriate to ensure proper functioning.
- 11023.27 Maintenance records for equipment shall be maintained by the ASF for at least three (3) years.

11024 DIETARY SERVICE

- 11024.1 If the program calls for dietary service, serving of snacks or other food, adequate space, equipment, and supplies shall be provided.
- 11024.2 Applicable local laws pertaining to the receipt, storage, refrigeration, preparation, and serving of food shall be followed.
- 11024.3 Any food service offered or provided to patients of the ASF shall be in accordance with the District of Columbia laws and regulations on food, Title 25 DCMR, Subtitles A and B.

11025 CONSTRUCTION

- 11025.1 All ASFs shall be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided.

- 11025.2 New construction and renovations shall comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:
- (a) Building Officials and Code Administrators (BOCA);
 - (b) National Fire Protection Association, Life Safety Code;
 - (c) National Fire Protection Association 99, Health Care Facilities;
 - (d) American Institute for Architects (AIA) Guidelines for Design and Construction of Hospitals and Health Care Facilities;
 - (e) National Electrical Code; and
 - (f) Uniform Federal Accessibility Standards.

11026 INCIDENT REPORTS

- 11026.1 Each facility shall maintain and keep for three (3) years from the date of occurrence, a summary and analysis of each unusual incident that occurs within the facility, on the premises, and concerning a patient, visitor or employee of the facility.
- 11026.2 A summary and analysis of each incident shall be completed immediately and reviewed within forty-eight (48) hours of the incident by the Medical Director or the Director of Nursing.
- 11026.3 The incident report shall include the following:
- (a) The date, time and a description of the incident;
 - (b) The name of all witnesses;
 - (c) A statement of the victim;
 - (e) A statement indicating whether there is a pattern of occurrence; and
 - (e) A description of the corrective action taken.
- 11026.4 Summaries and analyses of incidents shall be reviewed at least monthly by the administrator or designee in order to identify and correct health and safety hazards and patterns of occurrence.
- 11026.5 Each incident shall be documented in the patient's records and reported to the Director within two (2) business days of occurrence, except that an incident or

accident that results in harm to a patient shall be reported within twenty-four (24) business hours of occurrence.

11027 GRIEVANCE PROCEDURES

11027.1 Each ASF shall develop written procedures that assure prompt and complete investigations of all grievances that are filed against any ASF staff.

11027.2 Grievance procedures shall be made available to the Director upon request.

11027.3 Each ASF's procedures shall include, at a minimum, a requirement that a senior staff person investigate grievances; the establishment of a reporting procedure so that the senior staff person receives the grievance within twenty-four (24) hours; and a written process for investigation.

11027.4 Each ASF shall maintain a grievance file that includes the original report of the complaint; the investigation process and any findings of the investigation; the outcome of the investigation; and any actions taken.

11027.5 The grievance file shall be available for inspection by the Director.

11027.6 If the Director receives a grievance regarding patient care or safety, the Director may inspect the ASF at any time.

11027.7 If the Director receives a grievance regarding the performance of a health care practitioner or standards of practice, the Director shall refer the grievance to the board that licenses or certifies the practitioner.

11027.8 The Director shall conduct investigations of complaints in accordance with 22-B DCMR Chapter 31.

11028 EVACUATION PLAN

11028.1 Each ASF shall develop a written evacuation plan to assure reasonable precautions are taken to protect patients, employees and visitors from fire and other disasters.

11028.2 The evacuation plan shall provide a program to familiarize personnel with evacuation procedures.

11028.3 The evacuation plan shall be available to the Director upon request.

11099 DEFINITIONS

Act - The Health-Care and Community Residence Facility, Hospice Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-504(a) (2012 Supp.)).

Administrator - A person who is a physician or a registered nurse, and has a baccalaureate or postgraduate degree in administration or a health-related field, or has at least three (3) years of administrative experience in a health care setting.

Advanced Practice Nurse - An individual licensed by the D.C. Board of Nursing and authorized to practice as an advanced practice nurse in the District of Columbia.

ASF (Ambulatory Surgical Facility) - In addition to and in accordance with D.C. Official Code § 44-501(a)(8), a facility, other than a hospital or maternity center, including an office-based facility, which has as its primary practice outpatient surgery and related procedures on patients for whom a planned stay would not exceed twenty-four (24) hours following an admission.

Certified registered nurse anesthetist (CRNA) - A registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently authorized to practice as an advanced practice registered nurse by the District of Columbia Board of Nursing.

Dentist - A person who is currently licensed under the laws of the District of Columbia to practice dentistry.

Director - The Director of the Department of Health and his or her designee.

Direct supervision - Supervision in which the supervisor is immediately available on the premises and within vocal communication either directly or by a communication device.

Freestanding - Independent and not part of or affiliated with an existing hospital, maternity center or other health care facility licensed in accordance with Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501, *et seq.*).

Governing body - The entity that is designated full responsibility for determining, implementing, and monitoring policies governing the operation of the ASF's.

Healthcare practitioner - Anyone who provides medical services at the ASF and is authorized to do so by the Health Occupations Revisions Act, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.*).

Licensed practical nurse - A person who is currently licensed by the D.C. Board of Nursing as a licensed vocational nurse.

Medical services - The diagnoses or treatment of any patient for a medical condition. Medical services shall include but not be limited to surgical services.

Reference laboratory - A Medicare-enrolled laboratory that receives a specimen from another, referring laboratory for testing and that actually performs the test.

Registered nurse (RN) - A person who is currently licensed by the D.C. Board of Nursing as a registered nurse.

Outpatient - Any patient who remains in an ASF less than twenty-four (24) hours after admission.

Physician - An individual licensed by the D.C. Medical Board and authorized to practice medicine in the District of Columbia.

Podiatrist - An individual licensed by the D.C. Medical Board and authorized to practice podiatry in the District of Columbia.

Physician's Assistant - An individual licensed by the D.C. Medical Board and authorized to practice as a physician's assistant in the District of Columbia.

Surgery - In accordance with the American College of Surgeons: (1) the structural altering of the human body by the incision or destruction of tissues; (2) the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transposition of live human tissue which include lasers, ultrasound, ionizing radiation, scalpels, probes, and needles; or (3) the injection of diagnostic or therapeutic substances into body cavities, internal organs, joints, sensory organs, and the central nervous system.

Unusual incident - An unexpected occurrence or accident resulting in death, life-threatening or serious injury, or the risk thereof, to a patient, visitor or employee of the facility. An unusual incident includes, but is not limited to, an incident resulting in the abuse of a patient, wrong-site, accidents, injuries, drug errors, abuse, and neglect.

Comments on this proposed rulemaking should be submitted, in writing, to (1) Sharon Williams Lewis DHA, RN-BC, CPM, Senior Deputy Director, Health Regulation and Licensing Administration, Department of Health, at 899 North Capitol Street, N.E., 2nd Floor, Washington, D.C. 20002 (email: Sharon.Lewis@dc.gov) and (2) Phillip Husband, General Counsel, Department of Health, 899 North Capitol Street, N.E. Suite 547, Washington, D.C. 20002 (email: Phillip.Husband@dc.gov) within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rulemaking are available at Office of the General Counsel, Department of Health, 899 North Capitol Street, N.E. Suite 547, Washington, D.C. 20002

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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 (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 Supp.)), and 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 an amendment to Chapter 45 (Medicaid Reimbursement for Federally Qualified Health Centers) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The second emergency and proposed rules amend the Medicaid reimbursement methodology for a Federally Qualified Health Center (FQHC). Federal law authorizes Medicaid reimbursement of FQHCs on a prospective payment system (PPS) that comports with federal regulations that have been in place since 2001, or an Alternative Payment Methodology (APM) that is based on reasonable costs, subject to certain requirements. The current PPS reimbursement model has been in effect since January 1, 2001. Since that time, the number of FQHCs operating in the District, the variety of services offered and patients served have increased.

The major components of the proposed reimbursement model include: (1) an APM for primary care services, behavioral health services, preventive, diagnostic, and comprehensive dental services; (2) a limit on reimbursement for administrative costs; (3) an additional payment based upon performance of each FQHC beginning in January 2018; and (4) a new PPS reimbursement model for new providers that enroll in the Medicaid program after the effective date of the corresponding SPA. These rules set forth the standards for participation in the Medicaid program, the standards used to develop the PPS, APM, cost reporting and auditing processes, and establish the requirements for Medicaid reimbursement of FQHCs for Medicaid-reimbursable services that are outside the scope of core services that qualify for APM rates. DHCF projects an increase in aggregate expenditures of approximately \$307,000 in Fiscal Year (FY) 2016 and \$1,200,000 in FY 2017.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 5, 2016 at 63 DCR 010227. Two sets of comments were received and a number of substantive changes were made. The majority of comments received were related to the rule sections governing PPPS, the APM for Behavioral Services, Change in the Scope of Practice, and Payment for Performance. All comments received were carefully considered by DHCF, and changes were made as follows:

General Provisions

DHCF received comments regarding requirements that FQHCs complete the Medicare enrollment process before enrolling in the Medicaid program. For claims submitted for services

furnished to dually eligible beneficiaries, FQHCs must be enrolled with Medicare in order to verify that claims will be paid first by Medicare.

With regard to the requirement that FQHCs serve only “temporarily” homebound patients, DHCF proposes to include language in the rule so that FQHCs may serve beneficiaries in the home that are not necessarily homebound. The change would allow the flexibility to provide access to beneficiaries that require home visits for a variety of reasons.

Prospective Payment System

Commenters argued that “medical service or services” should be replaced by “any federally-qualified health center service or other ambulatory service included under the Medicaid FQHC benefit, as described in Section 1905(a)(2)(C) of the Social Security Act.” Commenters also requested that DHCF include language that “allowable costs shall include total reasonable costs incurred in furnishing Medicaid coverable services divided by total visits, as determined by Medicare Reasonable Cost Principles as set forth in 42 CFR Part 413,” in order to reflect the total cost/total visits methodology used to calculate PPS.” DHCF cannot retroactively enact changes to the original provisions on the PPS methodology or reset rates that were set in 2001, which includes the above definition.

Commenters proposed a more specific definition behind a change in scope, including changes in the type, intensity, duration, or amount of services. DHCF agrees to the proposed language except for the addition of ambulatory services. In addition, DHCF proposes adding a new provision in Section 4509.

Commenters made the point that the rule should clarify that a claim can be eligible for wraparound even if the Managed Care Organization (MCO) did not make a payment on the claim. In light of the federal court’s holding in a U.S. Court of Appeals, Third Circuit case, DHCF will include more specificity on the process for appeals from MCO’s coverage denials in a subsequent proposed rule. However, revisions are made to the provisions on PPS and APM rates to include the requirement that FQHCs shall receive wrap-around supplemental payments.

Commenters contend that the adjustment to the PPS should be determined by dividing the incremental allowable cost attributable to a change in the scope of services by the number of encounters affected by the scope change event during the corresponding time period, with a corresponding allocation of overhead. The proposed language calculates the PPS rate adjustment by multiplying the current PPS rate by the percentage change in the allowable cost attributable to the change in scope; and the percentage change would be calculated as the total allowable cost including the change in scope for a twelve (12) month period, minus the total allowable cost stated in the FQHC's prior year’s cost report; divided by the total allowable cost stated in the FQHC's prior year’s cost report; and multiplied by one hundred percent (100%).

Additionally, the proposed language calculates the APM rate increase by dividing the total allowable cost plus the incremental allowable cost attributable to a change in the scope by the total number of encounters plus the encounters affected by the scope change. Overhead is

already accounted for, hence no need to add additional overhead when calculating the rate increase.

Commenters also requested that the PPS be adjusted for the year in which the change took place. DHCF does not intend to apply the revised rate retrospectively, as it is not administratively feasible for DHCF to recalculate rates retrospectively by recycling claims.

Commenters felt that the adjustment to the PPS should be granted if the change in scope of services results in at least a three percent (3%) increase or decrease in the FQHC's allowable costs, instead of the currently proposed five percent (5%). DHCF believes the five percent (5%) threshold is reasonable and a good threshold to determine whether the cost difference is substantial enough to warrant a change. Further, rates are rebased every three (3) years. Therefore, any increases less than five percent (5%) will be documented in cost reports and rates will be adjusted after the rebase.

With regard to the timeframe for submitting scope change requests, DHCF agrees that an FQHC should submit a written request to DHCF within ninety (90) days after the close of one (1) year of operation of the service that has resulted in a change of the scope of service, and has included this language in the rule.

In regard to the provisions on PPS rate adjustments based on changes in scope of services, DHCF removed all subsections from Section 4502 and revised Section 4509 to address adjustments to both PPS and APM rates based on scope of service changes.

APM for Behavioral Health Services

Commenters requested that the new behavioral health APM rate be applicable for all services in 2016, but DHCF is unable to make changes applicable retrospectively, and the effective date for these provisions must be consistent with the general effective date for these provisions. For these reasons, DHCF cannot make the behavioral health APM effective earlier.

Another commenter expressed concern that the one-fifth (1/5) reimbursement methodology for group therapy services will serve as a disincentive to the provision of group therapy in FQHCs and requested that group therapy be reimbursed at one third (1/3) of the individual behavioral health service APM rate. DHCF finds the proposed payment rate of one-fifth (1/5) to be fair and reasonable based on a review of other states' reimbursement of group therapy. For example, Massachusetts reimburses at one-eighth (1/8) of an FQHC encounter rate, and New York is another state that does not reimburse at the full PPS rate. New York's FQHCs are reimbursed a flat fee of \$35.16 per person for a group visit, which is not the full PPS rate. In addition, DHCF plans to rebase all rates based on more robust cost reports in 2018, which will provide more accurate rate data to inform future rates.

One commenter requested that DHCF remove the requirement that an FQHC which at the time of an audit has been operating as an FQHC, or an FQHC look-alike as determined by Health Resources Services Administration (HRSA), for fewer than five (5) years, receive the lesser of the average APM rate calculated for similar facilities. DHCF disagrees with this

proposed change. DHCF believes this provision is needed in order to ensure reasonable rates are paid to new FQHCs that are less than five (5) years old. During the initial years of operation, FQHCs have higher direct and indirect costs as they build up their network. Therefore, setting ongoing rates based on actual costs during that period could result in unreasonably high rates. Paying these newly established FQHCs comparable rates to established FQHCs will allow DHCF to establish a facility-specific APM based on actual cost experience that more accurately reflects ongoing experience.

One commenter requested that the rule be revised to allow FQHCs to bill for both individual and group therapy behavioral health service encounters in a single day. DHCF does not agree to the proposed change. DHCF is concerned that allowing FQHCs to bill for up to four (4) encounters per day may invite abuse. While keeping in mind a more patient-centric approach, DHCF proposes to clarify that FQHCs with beneficiaries receiving both group therapy and individual behavioral health services should request reimbursement at the individual therapy rate.

With regard to scope of behavioral health services, one commenter believed that FQHCs should be required to obtain separate National Provider Identifiers (NPIs) and bill in a non-FQHC capacity only for services that are fully outside the FQHC benefit. DHCF agrees in part; however, DHCF proposes to include a provision that reimbursement pursuant to these rules be within the scope of primary care services, behavioral health services, and dental as described in these rules. DHCF also proposes a provision that addresses the requirements for a FQHC to bill for services outside the scope of the four (4) core service categories, which includes obtaining a separate NPI.

Primary Care Services

With regard to the definition of “primary care services,” one commenter offered an alternate definition for consideration based on concern that the definition proposed in the initial rule was out of compliance with the federal laws concerning the scope of the FQHC benefit. In fact, the currently proposed definition by DHCF is consistent with FQHC services described in Section 1905(l)(2) of the Social Security Act, and DHCF already allows reimbursement pursuant to the fee schedule for any other ambulatory services covered under the State Plan.

One commenter requested that DHCF add nurse practitioners and licensed nutritionists to the list of primary care providers and remove the requirement to “work under the supervision of a physician.” DHCF disagrees. The DOH scope of practice regulations (17 DCMR § 5908.1) regarding nurse practitioners (NPs) require that NPs practice in accordance with the statute governing advanced practiced registered nurses (APRNs) (D.C. Official Code §§ 2-3306.4 – 7). In connection to physician assistants (PAs), Chapter 49 of Title 17 DCMR requires that PAs practice under a supervising physician. Regarding licensed nutritionists, Sections 1905(l)(2) and 1861(aa) the Social Security Act do not include licensed nutritionists among the providers of FQHC services. Additionally, nutritionist services may fit under allowable costs as an enabling service rather than covered primary care services.

Behavioral Health Services

A commenter made a similar request to add NPs to the list of covered behavioral health service providers was included under Subsection 4508.2(b) detailing which providers MCOs will credential, but the DOH regulations outlined above still stands. The same commenter requested that DHCF ensure MCOs credential all providers included in Subsection 4503.2; DHCF will work with MCOs to streamline the credentialing process.

Changes in the Scope of Services

One commenter proposed that DHCF add new language clarifying what constituted a change in type, intensity, duration or amount of service. DHCF agreed that additional language would clarify intent and adopted most of the proposed language.

One commenter requested that language be added so that a change in the scope of services may be triggered by an increase in the number of encounters or in the number of an FQHC's clinical staff. In fact, any increase in the number of clinicians or encounters is already included as constituting a change in intensity. Because this is already addressed, no change is needed.

One commenter proposed that the entirety of Subsection 4509.4 be stricken. That provision states, "A change in the scope of services shall not be based on a change in the number of encounters, or a change in the number of staff that furnish the existing service." In fact, the change in scope adjustment must specify parameters for which scope of change adjustments will be made. Therefore, DHCF cannot strike this section.

With regard to the change in scope threshold for APM rate changes, a commenter asked to update the provision allowing for an adjustment to the APM if the change in scope of services results in at least a three percent (3%) increase or decrease in the FQHC's allowable costs, instead of the currently proposed five percent (5%). DHCF believes the five percent (5%) threshold is reasonable and a good threshold to determine whether the change is substantial. Further, rates are rebased every three (3) years, so any increases less than three percent (3%) will be captured during the rebase year.

Commenters recommended a revision to require the health center provide a written notification to DHCF within ninety (90) days after the close of the year in which the change in the scope of services occurred, and that the deadline for the health center to file a cost report demonstrating the increase in cost per encounter should be one (1) year after the close of the year in which the scope change occurred. DHCF agrees to this suggestion and has proposed revised language. Additionally, DHCF will add the same provisions that were added to PPS adjustments based on scope changes.

Commenters also proposed that the timeframe for change in scope for APM rates to take effect be stricken altogether, and that a rate adjustment relating to a change in the scope of services should take effect as of the first date of the fiscal period when the scope change event occurred. DHCF does not intend to apply the revised rate retroactively and will only apply it prospectively as it is not administratively feasible or practical for DHCF to recalculate rates.

Allowable Costs

Under the definition of allowable costs, one commenter suggested adding “staff cost related to quality improvement, data analytics, and compliance.” DHCF agrees with the proposed change, and proposes a new subparagraph under incidental services.

Similarly, one commenter proposed to add “IT infrastructure” under the capital and facility cost definition. DHCF agrees with the intention of ensuring FQHCs are reimbursed for their IT infrastructure costs, but these costs are already included to support patient care under incidental costs or to support patient record keeping under administrative costs. In this rule, DHCF is proposing changes to existing language covering costs for hardware and software systems, under incidental costs in Subsection 4510.2(f)(8) and administrative costs under Subsection 4510.9(i), to clarify that services related to implementation of hardware and software systems will be included.

Under the administrative costs listed, a commenter suggested striking “training” from the list. DHCF proposes new clarifying language to include training of administrative personnel for the provision of health care services.

Commenters requested that DHCF remove the twenty percent (20%) cap on Medicaid reimbursement for administrative cost in the initial proposed rule. DHCF feels the cap is reasonable since many FQHCs reported unusually and unreasonably high administrative costs in cost reports DHCF reviewed in developing this rule. The cap is only applicable to administrative expenses, and would not apply to small-sized FQHCs during the first year of implementation. Additionally, DHCF did not include a cap/ceiling for capital- and facility-related expenditures, which will enable FQHCs to invest in needed facility and operational improvements.

Exclusions from Allowable Costs

One commenter proposed to strike “transportation costs” from the list of expenses excluded from allowable costs, but in fact, costs related to patient care should be addressed under enabling services. However, DHCF has revised incidental services and enabling services under Subsections 4507.1(b) and (c) and included the costs related to both services under allowable costs.

One commenter proposed that the section which would require that cost paid for by locally funded grants or other local services be offset against expenses in determining an FQHC’s allowable costs be removed. The intention of the offset is to avoid District sister agencies from paying the same cost twice, since the locally funded grant was already considered by DHCF during the rate development process.

Reimbursement for Out of State Providers

One commenter proposed that FQHCs located outside of the District of Columbia should be reimbursed at the DC PPS rate for DC patients seen at the FQHCs. DHCF took into account other states’ approaches, and DHCF finds this reimbursement requirement to be fair and reasonable if beneficiaries are going to out-of-state facilities.

Performance Payment

All comments related to this section are appreciated, and DHCF will provide proposed changes to this section in a subsequent rule.

Cost Reporting and Record Maintenance

One commenter expressed concern that FQHCs may not have completed their audits within the one hundred fifty (150) day timeframe. In fact, the stated provision allows FQHCs to provide unaudited financial statements if they do not have audited financial statements.

Regarding the requirement to submit “the annual HRSA application submitted to the federal government,” DHCF agrees with the suggestion to replace this requirement with “its annual HRSA Uniform Data System (UDS) report.”

Appeals

DHCF agrees with the commenter that DHCF needs an appeals process for wrap denials, and commits to including more specificity on the process for appeals in a subsequent proposed rule.

General

One commenter expressed concern regarding the eventual reconciliation between the interim rate and the APM rate projected to be retroactive to September 1, 2016, recommending that DHCF allow either billing methodology beginning September 1, 2016 at the discretion of the health centers. Unfortunately, DHCF does not have authority to pay the APM rate on September 1, 2016 without CMS approval.

Lastly, one commenter shared that while the rule does not explicitly address this topic, DHCF has made a commitment to address procedures and payment for those beneficiaries dually eligible for full Medicaid and Medicare in 2017. DHCF agrees with this sentiment, and included a provision that DHCF would pay an amount that is equal to the difference between the payment received from Medicare and any other payers (if the individual is enrolled in any other form of insurance) and the FQHC’s payment rate.

In addition to the substantive changes based on comments received, DHCF is also proposing substantive changes to conform with the corresponding State Plan Amendment (SPA). The proposed changes are as follows: (1) the rule deletes “Healthcare Effectiveness Data and Information Set (HEDIS)” from the list of quality measures in Subsection 4500.5 because this is already included as an National Committee for Quality Assurance (NCQA) measure and inclusion would be redundant; (2) the rule revises Sections 4503, 4504, 4505, and 4506 to clarify that the APM rates will not be adjusted based on increases to the Medicare Economic Index (MEI) during years that the APM is being rebased; (3) the rule adds a new requirement in Section 4504 that FQHC providers that deliver substance abuse services must be certified by DBH in accordance with Chapter 63 of Title 22-A DCMR; (4) the rule adds language in Sections 4502, 4505, and 4506, to clarify that FQHCs must bill all services related to a single course of treatment as part of a single encounter; (5) the rule proposes to include clarifying

language in Section 4502 to address the process for wrap-around supplemental payments, and omit redundant language in Sections 4503, 4504, 4505, and 4506; (6) the rule updates the language regarding services provided pursuant to EPSDT requirements (in Section 4507) to clarify that it will include the full scope of services, not just “well-child” care, and also to allow reimbursement for these services provided outside the clinic, for example in mobile units or in the home; (7) the rule clarifies in Section 4510 that costs incurred in furnishing dental services will be included among administrative and capital costs; (8) the rules clarifies, through non-substantive edits, Sections 4502, 4503, 4504, 4505, 4506, 4509, 4511, 4513, 4515, and 4516 and (9) the rule includes additional language in the definition of “Encounter” to include a telemedicine visit which will enable FQHCs to be reimbursed for telemedicine encounters in accordance with District requirements.

Further substantive changes were made to the rule in light of discussions on implementation of the rule with FQHCs, and to clarify certain requirements. Subsection 4500.2 is revised to include the requirement that the FQHCs meet requirements set forth by CMS under Title XVIII of the Social Security Act, including but not limited to meeting the requirements established by the federal Health Resource Services Administration (HRSA). Additional revisions are made to Sections 4502, 4503, 4504, 4505, and 4506 to address the requirements regarding wrap-around supplemental payments to FQHCs that receive global payments from MCOs, and FQHCs that have sub-capitation arrangements with MCOs. Revisions are also made to Sections 4503, 4504, 4505, 4506 to specify that the rate for FQHCs or FQHC look-alikes that have been in operation for less than five (5) years will be calculated as of the first day of the fiscal year. Section 4511 is revised to include marketing and lobbying expenses as exclusions to allowable costs. Section 4512 is revised to clarify that PPS rates for new FQHCs shall be calculated as of the first day of the District fiscal year that the FQHCs commence operations. A new provision is added to Section 4509 to include a calculation for PPS rate adjustments based on scope of change requests. Section 4513 is revised to require that FQHCs located out of state must comply with application and enrollment requirements set forth under Section 4500, and to clarify that the PPS or APM rate set by the District will be compared with the rate set by the Medicaid agency in which the FQHCs are located. Section 4513 is amended to specify that for Medicaid beneficiaries that are enrolled out of state, the FQHCs must seek reimbursement from the state in which the beneficiary is enrolled. Definitions for “capitation payments,” “global payments,” and “single course of treatment” are added in order to provide clarification. Lastly, other existing language was clarified in order to simplify interpretation.

Continued emergency action is necessary for the immediate preservation of the health, safety and welfare of persons receiving primary care, behavioral health, and dental services from FQHCs. FQHCs deliver primary care, behavioral health, and dental services to some of the District’s most physically and economically vulnerable residents. In order to ensure that the District’s FQHCs maintain adequate resources to continue their role as safety net providers within the public health care delivery system, these rules must be published on an emergency basis to preserve the health, safety and welfare of individuals receiving health care from the FQHCs.

This Notice of Second Emergency and Proposed Rulemaking was adopted on November 18, 2016 and became effective on the date, subject to approval by the federal Centers for Medicare and Medicaid (CMS) on the corresponding State Plan Amendment. The Council of the District

of Columbia approved the corresponding State Plan amendment through the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905 (August 14, 2015)). The corresponding State Plan amendment is awaiting approval from CMS.

The emergency rules shall remain in effect for one hundred and twenty (120) days from the date of adoption, until March 18, 2017, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to adopt this proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 45, MEDICAID REIMBURSEMENT FOR FEDERALLY QUALIFIED HEALTH CENTERS of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and replaced with a new Chapter 45 to read as follows:

**CHAPTER 45 MEDICAID REIMBURSEMENT FOR FEDERALLY
QUALIFIED HEALTH CENTERS**

- 4500 General Provisions
- 4501 Reimbursement
- 4502 Prospective Payment System
- 4503 Alternative Payment Methodology For Primary Care Services
- 4504 Alternative Payment Methodology For Behavioral Health Services
- 4505 Alternative Payment Methodology For Preventive And Diagnostic Dental Services
- 4506 Alternative Payment Methodology For Comprehensive Dental Services
- 4507 Primary Care Services
- 4508 Behavioral Health Services
- 4509 Change in the Scope Of Services
- 4510 Allowable Costs
- 4511 Exclusions From Allowable Costs
- 4512 Reimbursement For New Providers
- 4513 Reimbursement For Out Of State Providers
- 4514 Performance Payment
- 4515 Rebasing For APM
- 4516 Cost Reporting And Record Maintenance
- 4517 Access to Records
- 4518 Appeals
- 4599 Definitions

4500 GENERAL PROVISIONS

4500.1 The rules set forth in this chapter establish the conditions of participation for a Federally Qualified Health Center (FQHC) in the Medicaid program. These rules also establish the reimbursement methodology for services rendered to Medicaid beneficiaries by an FQHC.

4500.2 Prior to seeking Medicaid reimbursement each FQHC must:

- (a) Be approved by the federal Centers for Medicare and Medicaid Services (CMS) and meet the requirements set forth in the applicable provisions of Title XVIII of the Social Security Act and implementing regulations, which shall include but not be limited to meeting the requirements governing federal Health Resources Services Administration (HRSA) approval of FQHCs and FQHC Look-Alikes;
- (b) Be screened and enrolled in the Medicaid program pursuant to the requirements set forth in Chapter 94 of Title 29 of the District of Columbia Municipal Regulations (DCMR); and
- (c) Obtain a National Provider Identifier (NPI) for each site operated by an FQHC.

4500.3 Medicaid reimbursable services provided by an FQHC shall be furnished in accordance with Section 4231 of the State Medicaid Manual and provided in a setting that is within the scope of project approved by HRSA.

4500.4 Services may be provided at other sites including mobile vans, intermittent sites such as a homeless shelter, a seasonal site, or a beneficiary's place of residence, provided the sites and activities are within the FQHC's Scope of Project approved by HRSA and the claims for reimbursement are consistent with the services described in Sections 4502 and 4505 through 4508.

4500.5 All services provided by an FQHC shall be subject to quality standards, measures and guidelines established by National Committee for Quality Assurance (NCQA), HRSA, CMS and the Department of Health Care Finance (DHCF).

4500.6 Services for which an FQHC seeks Medicaid reimbursement pursuant to this chapter shall be delivered in accordance with the corresponding standards for service delivery, as described in relevant sections of the District of Columbia State Plan for Medical Assistance and implementing regulations.

4501 REIMBURSEMENT

4501.1 Medicaid reimbursement for primary care, behavioral health, and dental services furnished by an FQHC shall be made under:

- (a) A Prospective Payment System (PPS) as described in Section 4502; or
- (b) An Alternative Payment Methodology (APM) as described in Sections 4503 through 4506.

4501.2 Each FQHC that is enrolled in the District's Medicaid program as of the effective date of the corresponding State Plan Amendment (SPA) that elects to be

reimbursed for services under an APM shall sign an agreement with the DHCF.

- 4501.3 The APM referenced in Subsection 4501.2 shall become effective on or after the date of an executed agreement between DHCF and the FQHC, or the effective date of the corresponding State Plan amendment, whichever is later.
- 4501.4 The APM shall comply with all requirements set forth in federal law and rules.
- 4501.5 Any FQHC that elects not to be reimbursed under an APM shall be reimbursed under the PPS methodology described in Section 4502.
- 4501.6 The FQHC may only be reimbursed for services that are within the scope of services described in Sections 4502, 4505, 4506, 4507, and 4508.
- 4501.7 Each encounter for a Medicaid enrollee who is enrolled in Medicare or another form of insurance (or both) shall be paid an amount that is equal to the difference between the payment received from Medicare and any other payors and the FQHC's payment rate calculated pursuant to these rules.
- 4501.8 The payment received by an FQHC from Medicare, any other payor and Medicaid shall not exceed the Medicaid reimbursement rate.
- 4501.9 If an FQHC seeks Medicaid reimbursement outside scope of services described in Sections 4502, 4505, 4506, 4507, and 4508, the FQHC shall:
- (a) Obtain a separate D.C. Medicaid identification number in accordance with Chapter 94 of Title 29 DCMR;
 - (b) Obtain a separate NPI;
 - (c) Ensure that all individuals providing the service are authorized to render the service and meet the requirements governing the service; and
 - (d) Be subject to the limitations set forth in the State Plan for Medical Assistance and any governing rules and regulations.
- 4501.10 Each FQHC shall ensure that a service that requires multiple procedures, and which may be performed as part of a single course of treatment under general standards of care, shall be completed as a single encounter unless multiple visits are medically required to complete the treatment plan and the medical necessity is documented in the clinical record.

4502 PROSPECTIVE PAYMENT SYSTEM

- 4502.1 Medicaid reimbursement for services furnished on or after January 1, 2001 by an FQHC shall be a Prospective Payment System (PPS) rate consistent with the

requirements set forth in Section 1902(bb) of the Social Security Act.

- 4502.2 The PPS rate shall be paid for each encounter with a Medicaid beneficiary when a medical service or services are furnished. The PPS for services rendered beginning on or after January 1, 2001 through and including September 30, 2001, shall be calculated as follows:
- (a) The sum of the FQHC's audited allowable costs for the FYs 1999 and 2000 shall be divided by the total number of patient encounters in FYs 1999 and 2000;
 - (b) The amount established in Subsection 4502.2(a) shall be adjusted to take into account any increase or decrease in the scope of services furnished by the FQHC during FY 2001. Each FQHC shall report to DHCF any increase or decrease in the scope of services, including the starting date of the change. The amount of the adjustment shall be negotiated between the parties. The adjustment shall be implemented not later than ninety (90) days after establishment of the negotiated rate; and
 - (c) Allowable costs shall include reasonable costs that are incurred by the FQHC in furnishing Medicaid coverable services to Medicaid eligible beneficiaries, as determined by Medicare Reasonable Cost Principles set forth in 42 C.F.R. Part 413.
- 4502.3 For services furnished beginning FY 2002 and each fiscal year thereafter, an FQHC shall be reimbursed at a rate that is equal to the rate in effect the previous fiscal year, increased by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act and adjusted to take into account any increase or decrease in the scope of services furnished by the FQHC during the fiscal year.
- 4502.4 Each FQHC shall report to DHCF any increase or decrease in the scope of services, including the starting date of the change, consistent with the requirements established in Section 4509.
- 4502.5 In any case in which an entity first qualifies as an FQHC after FY 2000, the prospective rate for services furnished in the first year shall be equal to the average of the prospective rates paid to other FQHCs located in the same area with a similar caseload, effective on the date of application. For each fiscal year following the first year in which the entity first qualified as an FQHC, the prospective payment rate shall be computed in accordance with Subsection 4502.3. This section shall not apply to a new provider. Reimbursement for a new provider is set forth in Section 4512.
- 4502.6 An FQHC that furnishes services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in

Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a global payment) from such entity is less than the amount the FQHC would be entitled to receive under Subsections 4502.2 through 4502.5 will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF.

4502.7 The amount of the wrap-around supplemental payment identified in Section 4502.6 shall equal the difference between the payment received from the MCO as determined on a per encounter basis and the FQHC PPS rate calculated pursuant to this section. If an FQHC receives a global payment from an MCO and has a capitation payment arrangement with the MCO, the amount payable to the FQHC shall be offset by the capitation payment. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider.

4503 ALTERNATIVE PAYMENT METHODOLOGY FOR PRIMARY CARE SERVICES

4503.1 The APM rate for primary care services rendered beginning the effective date of the corresponding SPA by an FQHC shall be determined as described in this section. The APM rate shall be applicable to all sites for FQHCs operating in multiple locations. The APM rate shall be available for each encounter with a D.C. Medicaid beneficiary for primary care services described in Section 4507.

4503.2 The APM rate for primary care services shall be calculated by taking the sum of the FQHC's audited allowable costs for primary care services and related administrative and capital costs and dividing it by the total number of eligible primary care encounters.

4503.3 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate shall be determined based upon each FQHC's FY 2013 audited allowable costs.

4503.4 An FQHC which has been in operation as an FQHC, or an FQHC look-alike as determined by HRSA, for fewer than five (5) years at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4503.2 or the APM rate based on costs reported by the FQHC or FQHC look-alike.

4503.5 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate for primary care services shall not be lower than the Medicare PPS rate in FY 2016. If, an FQHC's APM rate for primary care services is less than the Medicare PPS rate, the APM rate shall be adjusted up to the Medicare PPS rate for the applicable time period.

4503.6 Except as described in Subsection 4503.4, for services rendered beginning

January 1, 2018 through December 31, 2018, each FQHC shall be reimbursed an APM rate (which shall apply to all of the FQHC's sites if the FQHC has more than one (1) site), for each encounter with a D.C. Medicaid beneficiary for primary care services as follows:

- (a) The APM rate for primary care services shall be determined under Subsection 4503.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year as reported in the audited cost report.

- 4503.7 Except as described in Subsection 4503.4, the APM rate for primary care services rendered on or after January 1, 2019, shall be determined as described in Subsection 4503.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for all FQHCs.
- 4503.8 The APM rate established pursuant to Subsection 4503.7 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act, except for the years the APM rate is rebased as described in Section 4515.
- 4503.9 An FQHC that furnishes primary care services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a global payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF.
- 4503.10 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the MCO as determined on a per encounter basis and the FQHC APM rate calculated pursuant to this section. If an FQHC receives a global payment from an MCO and has a capitation payment arrangement with the MCO, the FQHC shall receive an offset equal to the amount of the capitation payment. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider.
- 4503.11 Reimbursement shall be limited for each beneficiary to one primary care encounter per day. The FQHC shall document each encounter in the beneficiary's medical record.
- 4503.12 The APM rate established pursuant to this section may be subject to adjustment to take into account any change in the scope of services as described in Section 4509.

4503.13 Each FQHC shall include the Current Procedural Terminology (CPT) code(s) that correspond to the specific services provided on each claim submitted for reimbursement.

4503.14 If an FQHC seeks Medicaid reimbursement for services that are outside the scope of primary care services described in Section 4507, such as prescription drugs, labor and delivery services, or laboratory and x-ray services that are not office based, the FQHC shall follow the requirements set forth in Subsection 4501.9.

4504 ALTERNATIVE PAYMENT METHODOLOGY FOR BEHAVIORAL HEALTH SERVICES

4504.1 The APM rate for behavioral health services rendered beginning the effective date of the corresponding SPA by an FQHC shall be determined as described in this section. The APM rate shall be applicable to all sites for FQHCs operating in multiple locations. The APM rate shall be available per encounter with a D.C. Medicaid beneficiary for behavioral health services described in Section 4508.

4504.2 Except for group therapy as described in Subsection 4504.3 and reimbursement to certain FQHCs as described in Subsection 4504.5, the APM rate for behavioral health services shall be calculated by taking the sum of the FQHC's audited allowable costs for behavioral health services and related administrative and capital costs and dividing it by the total number of eligible behavioral health encounters.

4504.3 The APM rate for group therapy shall be equal to one fifth (1/5) of the APM rate for behavioral health service calculated pursuant to Subsection 4504.2.

4504.4 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate shall be determined based upon each FQHC's FY 2013 audited allowable costs.

4504.5 An FQHC which has been in operation as an FQHC, or an FQHC look-alike as determined by HRSA for fewer than five (5) years, at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4504.2 or the APM rate based on costs reported by the FQHC or FQHC look-alike.

4504.6 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate for behavioral services shall not be lower than the Medicare PPS in FY 2016. If, an FQHC's APM rate for behavioral health services is less than the Medicare PPS rate, the APM rate shall be adjusted up to the Medicare PPS rate for the applicable time period.

4504.7 Except as described in Subsection 4504.5, for services rendered beginning

January 1, 2018 through December 31, 2018, each FQHC shall be reimbursed an APM rate (which shall apply to all of the FQHC's sites if the FQHC has more than one (1) site), for each encounter with a D.C. Medicaid beneficiary for behavioral health services as follows:

(a) The APM rate for behavioral health services shall be the amount determined under Subsection 4504.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year as reported in the audited cost report; and

(b) Group therapy shall be determined as described in Subsection 4504.3.

4504.8 Except as described in Subsection 4504.5, the APM rate for behavioral health services rendered on or after January 1, 2019, shall be determined as described in Subsection 4504.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for all FQHCs.

4504.9 The APM rate established pursuant to Subsection 4504.8 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act except for the years the APM rate is rebased as described in Section 4515.

4504.10 An FQHC that furnishes behavioral health services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a global payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF.

4504.11 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the MCO as determined on a per encounter basis and the FQHC APM rate calculated pursuant to this section. If an FQHC receives a global payment from an MCO and has a capitation payment arrangement with the MCO, the FQHC shall receive an offset equal to the amount of the capitation payment. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider.

4504.12 For services furnished on or after the effective date of the corresponding SPA, reimbursement shall be limited for each beneficiary to one behavioral service encounter per day. If a beneficiary participates in individual therapy and group therapy on the same day, the FQHC shall receive the individual therapy rate. The FQHC shall document each encounter in the beneficiary's medical record.

- 4504.13 The APM rate established pursuant to this Section may be subject to adjustment to take into account any change in the scope of services as described in Section 4509.
- 4504.14 Each FQHC shall include the Current Procedural Terminology (CPT) code(s) that correspond to the specific services provided on each claim submitted for reimbursement.
- 4504.15 If an FQHC seeks Medicaid reimbursement for services that are outside the scope of behavioral health services described in Section 4508, such as rehabilitative services, including Mental Health Rehabilitative Services, prescription drugs, or laboratory and x-ray services that are not office-based, the FQHC shall comply with the requirements set forth under Subsection 4501.9.
- 4504.16 Each FQHC that delivers substance abuse services must be certified by the Department of Behavioral Health in accordance with Chapter 63 of Title 22-A DCMR.

4505 ALTERNATIVE PAYMENT METHODOLOGY FOR PREVENTIVE AND DIAGNOSTIC DENTAL SERVICES

- 4505.1 The APM rate for preventive and diagnostic dental services rendered beginning the effective date of the corresponding SPA by an FQHC shall be determined as described in this section. The APM rate shall be applicable to all sites for FQHCs operating in multiple locations. The APM rate shall be available per encounter with a D.C. Medicaid beneficiary for preventive and diagnostic dental services described in Subsection 4505.5.
- 4505.2 The APM rate for preventive and diagnostic dental services shall be calculated by taking the sum of the FQHC's audited allowable costs for preventative and diagnostic dental services and administrative and capital costs and dividing it by the total number of eligible preventive and diagnostic dental service encounters.
- 4505.3 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate shall be determined based upon each FQHC's FY 2013 audited allowable costs.
- 4505.4 Except as described in Subsection 4505.16, for services rendered beginning January 1, 2018 through December 31, 2018, the APM rate for preventive and diagnostic dental services shall be determined as described in Subsection 4505.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year as reported in the audited cost report.
- 4505.5 Except as described in Subsection 4505.16, the APM for preventive and

diagnostic dental services rendered on or after January 1, 2019 shall be determined as described in Subsection 4505.2 except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for all FQHCs.

- 4505.6 The APM rate established pursuant to Subsection 4505.5 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act, except for the years the APM rate is rebased as described in Section 4515.
- 4505.7 Subject to the limitations set forth in the section, covered preventive and diagnostic dental services provided by the FQHC may include the following procedures:
- (a) Diagnostic-American Dental Association (ADA) dental procedure codes (D0100-D0999) representing clinical oral examinations, radiographs, diagnostic imaging, tests and examinations; and
 - (b) Preventive-ADA dental procedure codes (D1000-D1999) representing dental prophylaxis, topical fluoride treatment (office procedure), space maintenance (passive appliances and sealants).
- 4505.8 Only procedure codes listed in Subsection 4505.7 that are included on the D.C. Medicaid Fee for Service schedule as covered benefits shall be reimbursed by the Medicaid program. The D.C. Medicaid Fee for Service schedule is available online at <http://www.dc-medicaid.com>.
- 4505.9 An FQHC that furnishes preventive and diagnostic dental services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a global payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF.
- 4505.10 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the MCO as determined on a per encounter basis and the amount of the FQHC APM rate calculated pursuant to this section. If an FQHC receives a global payment from an MCO and has a capitation payment arrangement with the MCO, the FQHC shall receive an offset equal to the amount of the capitation payment. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider.
- 4505.11 Reimbursement shall be limited for each beneficiary to one preventive and diagnostic encounter per day. The FQHC shall document each encounter in the

beneficiary's dental record.

- 4505.12 If an encounter comprises both a preventive and diagnostic service and a comprehensive dental service as described in Section 4506, the FQHC shall bill the encounter as a comprehensive dental service.
- 4505.13 All preventive and diagnostic dental services shall be provided in accordance with the requirements, including any limitations, as set forth in Section 964 (Dental Services) of Title 29 DCMR.
- 4505.14 Each FQHC shall include the Current Dental Terminology (CDT) code(s) that correspond to the specific services provided on each claim submitted for reimbursement with associated tooth number, quadrant, and arch if applicable for the dental procedure.
- 4505.15 Each provider of preventive and diagnostic dental services, with the exception of children's fluoride varnish treatments, shall be a dentist or dental hygienist, working under the supervision of a dentist, who provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2015 Supp.)), or consistent with the applicable professional practices act within the jurisdiction where services are provided.
- 4505.16 An FQHC, or an FQHC look-alike as determined by HRSA, which has been in operation for fewer than five (5) years at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4505.2 or the APM rate based on costs reported by the FQHC, or FQHC look-alike.

4506 ALTERNATIVE PAYMENT METHODOLOGY FOR COMPREHENSIVE DENTAL SERVICES

- 4506.1 The APM rate for comprehensive dental services rendered by the FQHC on or after the effective date of the corresponding SPA by an FQHC shall be determined in accordance with this section. .
- 4506.2 The APM rate shall be applicable to all sites for FQHCs operating in multiple locations. The APM rate shall be available for each encounter with a D.C. Medicaid beneficiary for comprehensive dental services described in Subsection 4506.8.
- 4506.3 The APM rate for comprehensive dental services shall be calculated by taking the sum of the FQHC's audited allowable costs for comprehensive dental services and related administrative and capital costs and dividing it by the total number of eligible comprehensive dental service encounters.

- 4506.4 For services rendered beginning on or after the effective date of the corresponding SPA, through December 31, 2017, the APM rate shall be determined based upon each FQHC's FY 2013 audited allowable costs.
- 4506.5 Except as described in Subsection 4506.17, for services rendered from January 1, 2018 through December 31, 2018, the APM rate for comprehensive dental services shall be determined as described in Subsection 4506.3, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year as reported in the audited cost report.
- 4506.6 Except as described in Subsection 4506.17, the APM for comprehensive dental services rendered on or after January 1, 2019, the twenty percent (20%) administrative cap described in Subsection 4506.5 shall apply in determining the APM rate for all FQHCs, including those with less than ten thousand (10,000) annual encounters.
- 4506.7 The APM rate established pursuant to Subsection 4506.6 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act, except for the years the APM rate is rebased as described in Section 4515.
- 4506.8 Subject to the limitations set forth in this section, covered comprehensive dental services provided by the FQHC may include the following procedures:
- (a) Restorative - ADA dental procedure codes (D2000-D2999) representing amalgam restoration, resin-based composite restorations, crowns (single restorations only), and additional restorative services;
 - (b) Endodontic - ADA dental procedures codes (D3000-D3999) representing pulp capping, pulpotomies, endodontic therapy of primary and permanent teeth, endodontic retreatment, apexification/recalcification procedures, apicoectomy/periradicular services, and other endodontic services;
 - (c) Peridontic - ADA dental procedure codes (D4000-D4999) representing surgical services, including usual postoperative care), nonsurgical periodontal services, and other periodontal services;
 - (d) Prosthodontic - ADA dental procedure codes (D5000-D5899) representing complete and partial dentures treatment including repairs and rebasing, interim prosthesis, and other removable prosthetic services;
 - (e) Maxillofacial Prosthetics - ADA dental procedure code (D5982) representing the surgical stent procedure;

- (f) Implants Services - ADA dental procedure codes (D6000-D6199) representing Pre-surgical and surgical services, implant-supported prosthetics, and other implant services;
- (g) Oral and Maxillofacial Surgery - ADA dental procedure codes (D7000-D7999) representing treatment and care related to extractions, alveoloplasty, vestibuloplasty, surgical treatment of lesions, treatment of fractures, repair traumatic wounds including complicated suturing;
- (h) Orthodontics - ADA dental procedure codes (D8000-D8999) representing orthodontic treatments and services; and
- (i) Adjunctive General Services - ADA dental procedure codes (D9000-D9999) representing unclassified treatment, anesthesia, professional consultation, professional visits, drugs and miscellaneous.

4506.9 Only procedure codes listed in Subsection 4506.8 that are included on the D.C. Medicaid Fee for Service schedule as covered benefits shall be reimbursed by the Medicaid program. The D.C. Medicaid Fee for Service schedule is available online at <http://www.dc-medicaid.com>.

4506.10 An FQHC that furnishes comprehensive dental services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a global payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF.

4506.11 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the managed care entity as determined on a per encounter basis and the FQHC APM rate calculated receive pursuant to this section. If an FQHC receives a global payment from an MCO and has a capitation payment arrangement with the MCO, the FQHC shall receive an offset equal to the amount of the capitation payment. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap submission. This amount shall be offset against total amounts otherwise payable to the provider.

4506.12 Reimbursement shall be limited for each beneficiary to one comprehensive dental service encounter per day. The FQHC shall document each encounter in the beneficiary's dental record.

4506.13 If an encounter comprises both a preventive and diagnostic service as described in Section 4505 and a comprehensive dental service, the FQHC shall bill the encounter as a comprehensive dental service.

- 4506.14 All comprehensive dental services shall be provided in accordance with the requirements, including any limitations, as set forth in Section 964 (Dental Services) of Title 29 DCMR.
- 4506.15 Each FQHC shall include the CDT code(s) that correspond to the specific services provided on each claim submitted for reimbursement with associated tooth number, quadrant, surface, and arch if applicable for the dental procedure.
- 4506.16 Each provider of comprehensive dental services, with the exception of children's fluoride varnish treatments, shall be a dentist or dental hygienist, working under the supervision of a dentist, who provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2015 Supp.)), or consistent with the applicable professional practices act within the jurisdiction where services are provided.
- 4506.17 An FQHC, or an FQHC look-alike as determined by HRSA, which has been in operation for fewer than five (5) years at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4506.3 or the APM rate based on costs reported by the FQHC, or FQHC look-alike.

4507 PRIMARY CARE SERVICES

- 4507.1 Covered primary care services provided by the FQHC shall be limited to the following services:
- (a) Health services related to family medicine, internal medicine, pediatrics, obstetrics (excluding services related to birth and delivery), and gynecology which include but are not limited to:
- (1) Health management services and treatment for illness, injuries or chronic conditions (examples of chronic conditions include diabetes, high blood pressure, etc.) including but not limited to health education and self-management training;
 - (2) Services provided pursuant to the Early and Periodic Screening, Diagnostic and Treatment benefit for Medicaid eligible children under the age of twenty-one (21);
 - (3) Preventive fluoride varnish for children, provided the service is furnished during a well-child visit by a physician or pediatrician who is acting within the scope of practice authorized pursuant to District of Columbia Health Occupations Revision Act of 1985,

effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2015 Supp.)) (“HORA”).

- (4) Preventive and diagnostic services, including but not limited to the following:
 - (i) Prenatal and postpartum care rendered at an FQHC, excluding labor and delivery;
 - (ii) Lactation consultation, education and support services if provided by a certified nurse mid-wife licensed in accordance with HORA and certified by the International Board of Lactation Consultant Examiners (IBLCE) or a registered lactation consultant certified by IBLCE;
 - (iii) Physical exams;
 - (iv) Family planning services;
 - (v) Screenings and assessments, including but not limited to, visual acuity and hearings screenings, and nutritional assessments and referrals;
 - (vi) Risk assessments and initial counseling regarding risks for clinical services;
 - (vii) PAP smears, breast exams and mammography referrals when provided as part of an office visit; and
 - (viii) Preventive health education.

4507.2 Primary care services set forth in this Subsection 4507.1(a) shall be delivered by the following health care professionals who are licensed in accordance with HORA:

- (a) A physician;
- (b) An Advanced Practiced Registered Nurse (APRN);
- (c) A physician assistant working under the supervision of physician; or
- (d) A nurse-mid-wife.

4508 BEHAVIORAL HEALTH SERVICES

4508.1 Covered behavioral health services provided by an FQHC shall be limited to

ambulatory mental health and substance abuse evaluation, treatment and management services identified by specific Current Procedural Terminology (CPT) codes. Such codes include psychiatric diagnosis, health and behavioral health assessment and treatment, individual and group psychotherapy, family therapy and pharmacologic management. DHCF shall issue a transmittal to the FQHCs which shall include the specific CPT codes including any billing requirements for covered behavioral health services.

4508.2 Covered behavioral health services set forth in this section shall be delivered by the following health care professionals who shall be licensed in accordance with HORA:

- (a) A physician, including a psychiatrist;
- (b) An APRN;
- (c) A psychologist;
- (d) A licensed independent clinical social worker;
- (e) A licensed independent social worker (LISW);
- (f) A graduate social worker, working under the supervision of an LISW;
- (g) A licensed professional counselor;
- (h) A certified addiction counselor;
- (i) A licensed marriage and family therapist; and
- (j) A licensed psychologist associate, working under the supervision of a psychologist or psychiatrist.

4509 CHANGE IN THE SCOPE OF SERVICES

4509.1 An FQHC may apply for an adjustment to its PPS rate or its APM rate (in any of the following four (4) service categories: (1) primary care; (2) behavioral health, (3) preventive and diagnostic dental services; and (4) comprehensive dental services) during any fiscal year after the effective date of the corresponding SPA, based upon a change in the scope of the services provided by the FQHC subject to the requirements set forth in the section.

4509.2 For services furnished on or after the effective date of these rules, a change in the scope of services shall only relate to services furnished on or after the effective date of the corresponding SPA and shall consist of a change in the type, intensity duration or amount of service as described below:

- (a) Type: for FQHCs adopting either the PPS or APM payment rate, the addition of a new service not previously provided by the FQHC, which has been approved by HRSA within the FQHC's Scope of Project and is consistent with the services described in Section 4505 through 4508;
- (b) Intensity: for FQHCs adopting the either the PPS or APM payment rate, a change in quantity or quality of a service demonstrated by an increase or decrease in the total quantity of labor and materials consumed by an individual patient during an average encounter or a change in the types of patients served;
- (c) Duration: for FQHCs adopting the either the PPS or APM payment rate, a change in the average length of time it takes FQHC providers to complete an average patient visit due to changing circumstances such as demographic shifts or the introduction of disease management programs;
- (d) Amount: for FQHCs adopting either the PPS or APM payment rate, an increase or decrease in the amount of services that an average patient receives in a Medicaid-covered visit such as additional outreach or case management services or improvements to technology or facilities that result in better services to the FQHC's patients.

4509.3 A change in the cost of a service, in and of itself, is not considered a change in the scope of services.

4509.4 A change in the scope of services shall not be based on a change in the number of encounters, or a change in the number of staff that furnish the existing service.

4509.5 DHCF shall review the costs related to the change in the scope of services. Rate changes based on a change in the scope of services provided by an FQHC shall be evaluated in accordance with the Medicare reasonable cost principles set forth in 42 C.F.R., Part 413.

4509.6 The adjustment to the PPS rate shall only be granted if the change in scope of services results in at least a five percent (5%) increase or decrease in the FQHC's allowable costs in the core service category for the fiscal year in which the change in scope of service became effective. The PPS rate adjustment for a change in scope shall be determined as the current PPS rate multiplied by the percentage change in the allowable cost attributable to the change in scope. The percentage change shall be calculated as follows:

- (a) The total allowable cost including the change in scope for a twelve (12) month period, minus the total allowable cost stated in the FQHC's prior year's cost report;

- (b) Divided by the total allowable cost stated in the FQHC's prior year's cost report; and
- (c) Multiplied by one hundred percent (100%).

- 4509.7 Subject to the limitation set forth in Subsection 4509.8, the adjustment to the APM rate shall be determined by dividing the total allowable cost plus the incremental allowable cost attributable to a change in the scope, by the total number of encounters including the encounters affected by the scope change during the corresponding time period.
- 4509.8 The adjustment to the APM rate shall only be granted if the change in scope of services results in at least a five percent (5%) increase or decrease in the FQHC's allowable costs in the core service category for the fiscal year in which the change in scope of service became effective. This percentage shall be calculated by comparing the FQHC's APM rate at the beginning of the fiscal year in question with the cost per encounter as calculated by a completed Medicaid cost report using data from the same fiscal year.
- 4509.9 For services furnished on or after the effective date of the corresponding SPA, an FQHC shall submit a written notification to DHCF within ninety (90) days after a change of the scope of service, and the FQHC shall file a cost report demonstrating the increase in cost per encounter no later than 90 days after the close of one year of operation in which the scope change occurred. The FQHC shall submit documentation in support of the request.
- 4509.10 DHCF shall provide a written notice of its determination to the FQHC within one hundred eighty (180) days of receiving all information related to the request described in Subsections 4509.9.
- 4509.11 If approved, the PPS or APM rate calculated pursuant to Sections 4502 or 4503 through 4506 shall be adjusted to reflect the adjustment for the change in the scope of service. The adjustment shall be effective on the first day of the first full month after DHCF has approved the request. There shall be no retroactive adjustment.
- 4509.12 DHCF shall review or audit the subsequently filed annual cost report to verify the costs that have a changed scope. Based upon that review DHCF may adjust the rate in accordance with the requirements set forth in this section.
- 4509.13 For services furnished on or after the effective date of the corresponding SPA, a request for a rate adjustment based on change in scope of services shall be limited to one (1) request per year, per FQHC.

4510 ALLOWABLE COSTS

- 4510.1 The standards established in this section are to provide guidance in determining whether certain cost items will be recognized as allowable costs incurred by a FQHC in furnishing primary care, behavioral health, diagnostic and preventive dental services, and comprehensive dental services regardless of the applicable payment methodology. In the absence of specific instructions or guidelines, each FQHC shall follow the Medicare reasonable cost principles set forth in 42 C.F.R. Part 413 and instructions set forth in the Medicare Provider Reimbursement Manual.
- 4510.2 Allowable costs, to the extent they are reasonable, necessary and related to patient care shall include but are not limited to the following:
- (a) Compensation for the services rendered by each health care professional listed in Subsections 4507.2, 4508.2, 4505.15 and 4506.16 and other supporting health care professionals including but not limited to registered nurses, licensed practical nurses, nurse aides, medical assistants, physician's assistants, technicians, etc.;
 - (b) Compensation for services for supervising health care professionals described in Subsections 4507.2, 4508.2, 4505.15 and 4506.16;
 - (c) Costs of services and supplies incident to the provision of services as described in paragraph (f) of this subsection;
 - (d) Administrative and capital costs that are incurred in furnishing primary care, behavioral health services, diagnostic and preventive dental services, and comprehensive dental services, including clinic administration, subject to the limitation set forth in this section;
 - (e) Enabling services that support an individual's management of his or her health and social service needs or improve the FQHC's ability to treat the individual, including:
 - (1) Health education and promotion services including assisting the individual in developing a self-management plan, executing the plan through self-monitoring and management skills, educating the individual on accessing care in appropriate settings and making healthy lifestyle and wellness choices; connecting the individual to peer and/or recovery supports including self-help and advocacy groups; and providing support for improving an individual's social network. These services shall be provided by health educators, with or without specific degrees in this area, family planning specialists, HIV specialists, or other professionals who provide information about health conditions and guidance about appropriate use of health services;

- (2) Translation and interpretation services during an encounter at the FQHC. These services are provided by staff whose full time or dedicated time is devoted to translation and/or interpretation services or by an outside licensed translation and interpretation service provider. Any portion of the time of a physician, nurse, medical assistant, or other support and administrative staff who provides interpretation or translation during the course of his or her other billable activities shall not be included;
- (3) Referrals to providers of medical services (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services). Such services shall not be reimbursed separately as enabling services where such referrals are provided during the course of other billable treatment activities;
- (4) Eligibility assistance services designed to assist individuals in establishing eligibility for and gaining access to Federal, State and District programs that provide or financially support the provision of medical related services;
- (5) Health literacy;
- (6) Outreach services to identify potential patients and clients and/or facilitate access or referral of potential health center patients to available health center services, including reminders for upcoming events, brochures and social services;
- (7) Care coordination, which consists of services designed to organize person-centered care activities and information sharing among those involved in the clinical and social aspects of an individual's care to achieve safer and more effective healthcare and improved health outcomes. These services shall be provided by individuals trained as, and with specific titles of care coordinators, case managers, referral coordinators, or other titles such as nurses, social workers, and other professional staff who are specifically allocated to care coordination during assigned hours but not when these services are an integral part of their other duties such as providing direct patient care;
- (8) Staff cost related to quality improvement, data analytics, and compliance; and
- (9) Training for health care professionals for the provision of health care services-

- (f) Incidental services and supplies that are integral, although incidental, to the diagnostic or treatment components of the services described in Subsections 4505.7, 4506.8, 4507.1(a), and 4508.1 which shall include but are not limited to the following:
- (1) Lactation consultation, education and support services that are provided by health care professionals described in Subsection 4507.1(4)(ii);
 - (2) Medical services ordinarily rendered by an FQHC staff person such as taking patient history, blood pressure measurement or temperatures, and changing dressings;
 - (3) Medical supplies, equipment or other disposable products such as gauze, bandages, and wrist braces;
 - (4) Administration of drugs or medication treatments, including administration of contraceptive treatments, that are delivered during a primary care visit, not including the cost of the drugs and medications;
 - (5) Immunizations;
 - (6) Electrocardiograms;
 - (7) Office-based laboratory screenings or tests performed by FQHC employees in conjunction with an encounter, which shall not include lab work performed by an external laboratory or x-ray provider. These services include but are not limited to stool testing for occult blood, dipstick urinalysis, cholesterol screening, and tuberculosis testing for high-risk beneficiaries; and
 - (8) Hardware and software systems, including implementation services, used to facilitate patient record-keeping and related services to support implementation.

4510.3 For the purposes of determining allowable and reasonable costs in the purchase of goods and services from a related party, each FQHC shall identify all related parties.

4510.4 A related party is any individual, organization or entity who currently or within the previous five (5) years has had a business relationship with the owner or operator of an FQHC, either directly or indirectly, or is related by marriage of birth to the owner or operator of the FQHC, or who has a relationship arising from common ownership or control.

- 4510.5 The cost claimed on the cost report for services, facilities and supplies furnished by a related party shall not exceed the lower of:
- (a) The cost incurred by the related party; or
 - (b) The price of comparable services, facilities, or supplies generally available.
- 4510.6 Administrative and capital costs shall be allocated and included in determining the total allowable costs for primary care services and behavioral health services.
- 4510.7 Administrative and general overhead costs shall consist of overhead facility costs as described in Subsection 4510.8 and administrative costs as described in Subsection 4510.9.
- 4510.8 Capital and facility costs shall include but not be limited to:
- (a) Rent;
 - (b) Insurance;
 - (c) Interest on mortgages or loans;
 - (d) Utilities;
 - (e) Depreciation on buildings;
 - (f) Depreciation on equipment;
 - (g) Maintenance, including janitorial services;
 - (h) Building security services; and
 - (i) Real estate and property taxes.
- 4510.9 Administrative costs shall include but not be limited to:
- (a) Administrative Salaries (*i.e.*, salary expenditures related to the administrative work of a FQHC);
 - (b) Fringe benefits and payroll taxes of personnel described in (a) of this subsection;
 - (c) Depreciation on office equipment;

- (d) Office supplies;
- (e) Legal expenses;
- (f) Accounting expenses;
- (g) Training costs of administrative personnel for the provision of health care services;
- (h) Telephone expense; and
- (i) Hardware and software, including implementation costs, not related to patient record keeping.

4510.10 Administrative costs shall be subject to a ceiling of twenty percent (20%) as described in Sections 4503, 4504, 4505 and 4506. Costs in excess of the ceiling shall not be included in allowable costs.

4511 EXCLUSIONS FROM ALLOWABLE COSTS

4511.1 The costs that shall be excluded from allowable costs for purposes of calculating the APM rate shall include, but not be limited to, the following:

- (a) Cost of services provided in settings that are not included in the FQHC's Scope of Project that is approved by HRSA;
- (b) Cost of services that are outside the scope of services described in Sections 4505 through 4508;
- (c) Graduate Medical Education costs; and
- (d) Expenses incurred by the FQHC that are unrelated to the delivery of primary care, behavioral health and dental services as defined in Sections 4505 through 4508, which shall include but are not limited to the following:
 - (1) Staff educational costs, including student loan reimbursements, except for training and staff development, required to enhance job performance;
 - (2) Marketing and public relations expenses;
 - (3) Community services that are provided as part of a large scale effort, such as a mass scale community wide immunization program or any other community wide service

- (4) Environmental activities;
- (5) Research;
- (6) Transportation costs;
- (7) Indirect costs allocated to unallowable direct health service costs;
- (8) Entertainment including costs for office parties and other social functions, retirement gifts, meals, and lodging;
- (9) Board of Director fees;
- (10) Federal, state and local income taxes;
- (11) Excise taxes;
- (12) All costs related to physicians and other professional's private practices;
- (13) Donations, services and goods and space, except for those that are allowable pursuant to the Office of Management and Budget Circular No. A-122 and the Medicare Provider Reimbursement Manual;
- (14) Fines and penalties;
- (15) Bad debts, including losses arising from uncollectible accounts receivable and other claims, related collection and legal costs;
- (16) Advertising, except for recruitment of personnel, procurement of goods and services, and disposal of medical equipment and supplies;
- (17) Contributions to a contingency reserve or any similar provision made for an event, the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of the event taking place;
- (18) Over-funding of contributions to self-insurance funds that do not represent payments based on current liabilities;
- (19) Fundraising expenses;
- (20) Goodwill;

- (21) Political contributions, lobbying expenses or other related expenses;
- (22) Costs attributable to the use of a vehicle or other company equipment for personal use;
- (23) Other personal expenses not related to patient care for the core services; and
- (24) Charitable contributions.

4511.2 Costs reimbursed or otherwise paid for by locally funded grants or other locally funded sources, shall be offset against expenses in determining allowable cost.

4511.3 An FQHC shall identify each grant by name and funding source in the supplemental data submitted with the cost report.

4511.4 Revenues related to the following categories shall be offset against expense.

- (a) Investment Income: Investment income on restricted and unrestricted funds which are commingled with other funds must be applied together against, but should not exceed, the total interest expense included in allowable costs;
- (b) Refunds and rebates for expenses;
- (c) Rental income for building and office space;
- (d) Related organization transactions pursuant to 42 C.F.R. § 413.17;
- (e) Sale of drugs to other than patient;
- (f) Vending Machines

4511.5 Enabling services described in Subsection 4510.2 shall not include any services that may be or are included as a part of a patient encounter, administrative, facility or other reimbursable cost described in these rules. The costs of enabling services shall be reasonable as determined in accordance with the Medicare reasonable cost principles set forth in 42 C.F.R. Part 413.

4512 REIMBURSEMENT FOR NEW PROVIDERS

4512.1 Each new provider seeking Medicaid reimbursement as an FQHC shall meet all of the requirements set forth in Section 4500.

4512.2 Reimbursement for services furnished by a new provider shall be determined in

accordance the PPS methodology set forth in this section.

- 4512.3 The PPS rate for services furnished during the first year of operation shall be calculated as of the first day of the District's fiscal year in which the FQHC commences operations, and shall be equal to the average of the PPS rates paid to other FQHCs located in the same geographical area with a similar caseload.
- 4512.4 After the first year of operation, the FQHC shall submit a cost report to DHCF. DHCF shall audit the cost report in accordance with the standards set forth in Sections 4510 and 4511 and establish a PPS for each of the following four categories:
- (a) Primary care services as described in Section 4507;
 - (b) Behavioral health services as described in Section 4508;
 - (c) Preventive and diagnostic dental services as described in Subsection 4505.7; and
 - (d) Comprehensive dental services as described in Subsection 4506.7.
- 4512.5 The PPS shall be calculated for each category described in Subsections 4512.4(a) through 4512.4(d) by taking the sum of the FQHC's audited allowable cost for the applicable category, including related administrative and capital costs, and dividing it by the total number of eligible encounters for that category. Administrative costs shall not exceed twenty percent (20%) of total allowable costs.
- 4512.6 The PPS rate described in Subsection 4512.5 shall remain in effect until all provider rates are rebased in accordance with Section 4515. After rebasing the FQHC shall have the option of electing an APM rate in accordance with the procedures set forth in Section 4501.
- 4512.7 In addition to the PPS rate described in this section, the FQHC shall be entitled to receive a supplemental wrap-around payment as described in Subsections 4502.6 through 4502.7.
- 4512.8 Each new FQHC provider seeking Medicaid reimbursement shall:
- (a) Obtain a separate National Provider Identification number; and
 - (b) Be screened and enrolled in the Medicaid program pursuant to the requirements set forth in Chapter 94 of Title 29 DCMR.
- 4512.9 Each new FQHC shall only seek Medicaid reimbursement for services provided in settings that are consistent with the services described in Sections 4505 through

4508.

4512.10 If an FQHC discontinues operations, either as a facility or at one of its sites, the FQHC shall notify DHCF in writing at least ninety days (90) prior to discontinuing services.

4512.11 The new provider will be allowed one encounter on the same day for each of the categories described in Subsection 4512.4(a), (b), and either (c) or (d), consistent with the requirements set forth under Subsections 4505.12 and 4506.13.

4513 REIMBURSEMENT FOR OUT OF STATE PROVIDERS

4513.1 An FQHC located outside of the District of Columbia that seeks reimbursement for services furnished to District of Columbia Medicaid beneficiaries shall comply with the requirements set forth under 4500.2 and shall be reimbursed:

(a) The lesser of the District of Columbia's PPS rate or the amount of reimbursement determined by the Medicaid agency in the state the FQHC is located; or

(b) The lesser of the District of Columbia's APM rate or the amount of reimbursement determined by the Medicaid agency in the state the FQHC is located.

4513.2 For Medicaid beneficiaries that are enrolled out of state, the FQHC shall seek reimbursement from the state in which the beneficiary is enrolled. The FQHC shall not seek reimbursement from DHCF.

4514 PERFORMANCE PAYMENT

4514.1 Beginning January 1, 2018, and annually thereafter, each FQHC that elects the APM reimbursement may be eligible to receive an additional payment based upon performance as described in this section.

4514.2 For 2018, the amount of the performance bonus pool available for distribution to all FQHCs shall be the difference between the FQHCs uncapped administrative cost and the capped administrative cost based on 2013 audited cost reports.

4514.3 The performance bonus pool established pursuant to Subsection 4514.2 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act.

4514.4 To participate in the pay-for-performance incentive program, each FQHC shall submit to DHCF by December 31st of each year the following information:

(a) HRSA approved quality improvement plan;

- (b) Written policies and procedures that describe the FQHC’s twenty-four (24) hours, seven (7) days a week access to clinical advice. These policies and procedures shall comply with DHCF-issued guidance describing standards for twenty-four (24) hours, seven (7) days a week access; and
- (c) Proof of National Committee for Quality Assurance (NCQA) Patient-Centered Medical Home (PCMH) Level 2 recognition or proof that the FQHC has begun the application process as demonstrated by either of the following:
 - (i) An emailed confirmation from NCQA indicating the FQHC’s submission of the application; or
 - (ii) An NCQA score of the FQHC’s PCMH submitted application.

4514.5 Each FQHC shall also submit to DHCF on a quarterly basis, its performance on the following measures of care delivery to participate in the pay-for-performance incentive program:

Measure Name	NQF #	Steward	Description
Comprehensive Diabetes Care (CDC): Hemoglobin A1c (HbA1c) Poor Control (>9.0%)	0059	National Committee for Quality Assurance (NCQA)	Percentage of FQHC patients 18-75 years of age with diabetes (type 1 and type 2) who had a Hemoglobin A1c >9.0% during the measurement year.
Comprehensive Diabetes Care (CDC): Hemoglobin A1c (HbA1c) testing	0057	NCQA	Percentage of FQHC patients 18-75 years of age with diabetes (type 1 and type 2) who received an HbA1c test during the measurement year.
Comprehensive Diabetes Care (CDC): Hemoglobin A1c (HbA1c) Control (<8.0%)	0575	NCQA	Percentage of FQHC patients 18 - 75 years of age with diabetes (type 1 and type 2) whose had a HbA1c <8.0% during the measurement year.
Weight Assessment and Counseling for Nutrition and Physical Activity for Children/ Adolescents WCC): Body Mass Index (BMI) Percentile Assessment for Children/ Adolescents	0024	NCQA	Percentage of FQHC patients 3-17 years of age who had an outpatient visit with a primary care practitioner (PCP) or obstetrical/gynecological (OB/GYN) practitioner and who had evidence of a BMI percentile assessment during the measurement year.

Measure Name	NQF #	Steward	Description
Preventive Care and Screening: Body Mass Index (BMI) Screening and Follow-Up	0421	Centers for Medicare and Medicaid Services (CMS)	Percentage of FQHC patients aged 18 years and older with a documented BMI during the current encounter or during the previous six months AND when the BMI is outside of normal parameters, a follow-up plan is documented during the encounter or during the previous six months of the encounter.
Cervical Cancer Screening (CCS)	0032	NCQA	Percentage of FQHC patients (women) 21-64 years of age, who were screened for cervical cancer.
Colorectal Cancer Screening (COL)	0034	NCQA	Percentage of FQHC patients 50-75 years of age who had appropriate screening for colorectal cancer.
Controlling High Blood Pressure (CBP)	0018	NCQA	Percentage of FQHC patients 18-85 years of age who had a diagnosis of hypertension (HTN) and whose blood pressure (BP) was adequately controlled during the measurement year. <ul style="list-style-type: none"> • Members 18–59 years of age whose BP was <140/90 mm Hg. • Members 60–85 years of age with a diagnosis of diabetes whose BP was <140/90 mm Hg. • Members 60–85 years of age without a diagnosis of diabetes whose BP was <150/90 mm Hg. <i>Note: Use the Hybrid Method for this measure. A single rate is reported and is the sum of all three groups.</i>
Linkage to HIV Medical Care	NA	HRSA - HIV/AIDS Bureau	Percentage of FQHC patients who attended a routine HIV medical care visit within 3 months of HIV diagnosis.
Percentage of Low Birthweight Births	1382	Centers for Disease Control and Prevention (CDC)	Percentage of FQHC births with birthweight <2,500 grams during the measurement year.
Trimester of Entry into Prenatal Care	NA	HRSA- Bureau of Primary Health Care	Percentage of prenatal care patients who entered treatment during their first trimester.
Preventive Care and Screening: Screening for Clinical Depression and Follow-Up Plan	0418	CMS	Percentage of FQHC patients aged 12 years and older screened for clinical depression using an age appropriate standardized tool AND a follow up plan is documented.

4514.6 DHCF shall review these measures annually and may update them as needed. If changes are warranted, DHCF shall notify FQHCs of proposed changes through transmittals to the FQHCs describing any changes to the measures set forth in Subsection 4514.5.

4514.7 Each participating FQHC’s maximum annual bonus payment shall be based on the number of unique Medicaid beneficiaries that received primary care services from the FQHC within the measurement year, divided by the total number of Medicaid patients that received primary care services within the measurement year, from all

FQHCs participating in the pay-for-performance incentive program. The resulting percentage is each participating FQHC’s market share.

4514.8 DHCF shall use each participating FQHC’s market share for categorization into four (4) distinct bonus payment groups. Each bonus payment group shall be determined by dividing by four (4) the total number of Medicaid patients that received primary care services from the participating FQHCs within the measurement year (*i.e.*, descriptive statistic quartiles). The description statistic quartiles separate the aggregate number of primary care patients served into twenty-five percent (25%) intervals. The market share of each FQHC shall be summed to calculate each quartile’s aggregate market share percentage.

4514.9 The aggregate market share percentage described in Subsection 4514.8 shall be multiplied by the total available pay-for-performance incentive program funding pool to determine the maximum bonus payment amount for each quartile. The maximum bonus amount for each quartile shall be distributed evenly among the number of FQHCs in each quartile.

4514.10 Beginning January 1, 2018, in addition to meeting the requirements set forth in Subsections 4514.4 and 4514.5, each qualifying FQHC shall achieve a three percent (3%) reduction on one of the following three (3) key measures to qualify for a pay-for-performance incentive payment:

Measure Name	NQF #	Steward	Description
Plan All-Cause Readmission	1768	NCQA	For FQHC patients 18 years of age and older, the number of acute inpatient stays during the measurement year that were followed by an acute readmission for any diagnosis within 30 days and the predicted probability of an acute readmission. Data is reported in the following categories: 1. Count of Index Hospital Stays (denominator) 2. Count of 30-Day Readmissions (numerator) 3. Average adjusted Probability of Readmission
Potentially Preventable Hospitalization	Not Applicable	AHRQ	Percentage of inpatient admissions among FQHC participants for specific ambulatory care conditions that may have been prevented through appropriate outpatient care.
Low-Acuity Non-Emergent Emergency Department Visits	Not Applicable	DHCF	Percentage of avoidable low-acuity non-emergent ED visits.

4514.11 DHCF shall review the baseline performance annually and may adjust the reduction targets for calendar year 2019 and future years. DHCF shall notify FQHCs of any necessary reduction target adjustments at least one year in advance of their application.

4514.12 Beginning January 1, 2018, the pay-for-performance incentive payment amount each qualifying FQHC shall be eligible to receive shall not exceed the amount that is available for distribution to each FQHC as described in Subsection 4514.7 and shall be subject to the following limitations:

- (a) An FQHC shall receive one third (1/3) of their pay-for-performance incentive payment for a three percent (3%) reduction in one (1) key measure;
- (b) An FQHC shall receive two-thirds (2/3) of their pay-for-performance incentive payment for a three percent (3%) reduction in two (2) key measures; or
- (c) An FQHC shall receive one hundred percent (100%) of their pay-for-performance incentive payment for a three percent (3%) reduction in all three (3) key measures.

4515 REBASING FOR APM

4515.1 Not later than January 1, 2018 and every three (3) years thereafter, the cost and financial data used to determine the APM rate shall be updated based upon audited cost reports that reflect costs that are two (2) years prior to the base year and in accordance with the methodology set forth in Sections 4503, 4504, 4505, and 4506.

4516 COST REPORTING AND RECORD MAINTENANCE

4516.1 Each FQHC shall submit to DHCF a Medicaid cost report, prepared based on the accrual basis of accounting, in accordance with Generally Accepted Accounting Principles. In addition FQHCs are required to submit their audited financial statements and any supplemental statements as required by DHCF no later than one hundred and fifty days (150) days after the end of each FQHC's fiscal year, unless DHCF grants an extension or the FQHC discontinues participation in the Medicaid program as a FQHC. In the absence of audited financial statements, the FQHC may submit unaudited financial statements prepared by the FQHC.

4516.2 Each FQHC shall also submit to DHCF its FQHC Medicare cost report that is filed with its respective Medicare fiscal intermediary, if submission of the Medicare cost report is required by the federal Centers for Medicare and Medicaid Services.

4516.3 Each FQHC shall maintain adequate financial records and statistical data for proper determination of allowable costs and in support of the costs reflected on each line of the cost report. The financial records shall include the FQHC's accounting and related records including the general ledger and books of original entry, all transactions documents, statistical data, lease and rental agreements and

any other original documents which pertain to the determination of costs.

- 4516.4 Each FQHC shall maintain the records pertaining to each cost report for a period of not less than ten (10) years after filing of the cost report. If the records relate to a cost reporting period under audit or appeal, records shall be retained until the audit or appeal is completed.
- 4516.5 DHCF reserves the right to audit the FQHC's Medicaid cost reports and financial reports at any time. DHCF may review or audit the cost reports to determine allowable costs in the base rate calculation or any rate adjustment as set forth in these rules.
- 4516.6 If a provider's cost report has not been submitted to DHCF within hundred and fifty (150) days after the end of the FQHC's fiscal year as set forth in Subsection 4516.1, or within the deadline granted pursuant to an extension, DHCF reserves the right not to adjust the FQHC's APM rate or PPS rate for services as described in Subsection 4502.3, 4503.7, 4504.8, 4505.4 and 4506.4.
- 4516.7 Each FQHC shall submit to DHCF a copy of the annual HRSA Uniform Data System (UDS) report within thirty (30) calendar days of the filing.

4517 ACCESS TO RECORDS

- 4517.1 Each FQHC shall grant full access to all records during announced and unannounced audits and reviews by DHCF personnel, representatives of the U.S. Department of Health and Human Services, and any authorized agent(s) or official(s) of the federal or District of Columbia government.

4518 APPEALS

- 4518.1 At the conclusion of any required audit, the FQHC shall receive a Notice of Audit Findings that includes a description of each audit finding and the reason for any adjustment to allowable costs or to the payment rate.
- 4518.2 An FQHC may request an administrative review of payment rate calculations, scope of service adjustments or audit adjustments. The FQHC may request administrative review within thirty (30) calendar days of receiving the Notice of Audit Findings by sending a written request for administrative review to the Office of Rates, Reimbursement and Financial Analysis, DHCF.
- 4518.3 The written request for administrative review shall identify the specific audit adjustment or payment rate calculation to be reviewed, and include an explanation of why the FQHC views the adjustment or calculation to be in error, the requested relief, and supporting documentation.
- 4518.4 DHCF shall mail a formal response to the FQHC not later than sixty (60) calendar

days from the date of receipt of the written request for administrative review.

4518.5 Within thirty (30) calendar days of receipt of DHCF's written determination relative to the administrative review, the FQHC may appeal the determination by filing a written request for appeal with the Office of Administrative Hearings (OAH).

4518.6 The filing of an appeal with OAH shall not stay DHCF's action to adjust the FQHCs payment rate.

4599 DEFINITIONS

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

Alternative Payment Methodology - A reimbursement model other than a Prospective Payment System Rate for services furnished by an FQHC which meets the requirements set forth in Section 1902(bb)(6) of the Social Security Act.

Capitation payment - A payment an MCO makes periodically to an FQHC on behalf of a beneficiary enrolled with the FQHC pursuant to a contract between the MCO and FQHC. In exchange for the payment, the FQHC agrees to provide or arrange for the provision of the service(s) covered under the contract regardless of whether the particular beneficiary receives services during the covered period.

Encounter - A face-to-face visit between a Medicaid beneficiary and a qualified FQHC health care professional as described in Subsections 4507.2, 4508.2, 4505.15 and 4506.16, who exercises independent judgment when providing services for a primary care, behavioral health service or dental service. An encounter may also include a visit between a Medicaid beneficiary receiving healthcare services and a provider via telemedicine in accordance with District requirements.

FQHC look-alike - A private, charitable, tax-exempt non-profit organization or public entity that is approved by the federal Centers for Medicaid and Medicare Services and authorized to provide Federally Qualified Health Center Services.

Global payments – A single payment by an MCO to an FQHC to cover multiple visits.

New Provider – An FQHC that enrolls in the District's Medicaid Program after the effective date of the corresponding SPA or after the date that the rates are rebased.

Prospective Payment System Rate – The rate paid for services furnished in a particular fiscal year that is not dependent on actual cost experience during the same year in which the rate is in effect.

Single course of treatment – A process or sequence of services that are furnished at the same time or at the same visit.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900, Washington D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at 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
OFFICE OF THE MAYOR
OFFICE ON AGING**

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2017 Senior Villages Competitive Grant

The government of the District of Columbia, Office on Aging (DCOA) is soliciting applications for its *FY 2017 Senior Villages* competitive grant process. A total of \$250,000 in district appropriated funds is available for projects in three service areas. This Request for Applications (RFA) solicits submissions that will enable DCOA to select the most qualified candidate to:

- (1) plan and implement membership supports increasing village membership and participation;
- (2) start-up a new village in Wards 7 or 8; and/or
- (3) support capacity building, technical assistance, and team building to foster cohesion and network resource sharing amongst established villages and those interested in forming villages. Each project is expected to include a strong sustainability plan.

Nonprofit organizations with places of business within the physical boundaries of the District of Columbia are eligible to apply. For profit organizations with places of business within the physical boundaries of the District of Columbia are also eligible to apply, but must not include profit in their grant application. Because Senior Service Network (SSN) organizations are potential recipients of funds allocated, SSN members responding to this RFA must submit a statement justifying why their selection would not present a conflict of interest.

Entities may choose to apply for one or more of the three service areas. Separate applications must be completed and submitted for each area of interest. Applicants must demonstrate a strong sustainability plan for services outlined in each application for a target population of seniors 60 years old and older residing in District neighborhoods.

The RFA will be released December 2, 2016. Deadline for submission is January 6, 2017, 2:00 p.m. A Pre-Application Conference is scheduled December 9, 2016, 2:00 p.m. at 441 Fourth Street, NW, Room 1107.

Applications are available for pickup from the D.C. Office on Aging, 500 K Street, NE, Washington, DC 20002 between 9:00 a.m and 5:00 p.m. Monday through Friday. Electronic posting will be on the DCOA website, www.dcoa.dc.gov and the Office of Partnerships and Grants Development website, www.opgd.dc.gov no later than December 9, 2016. Inquiries should be forwarded to Aurora Delespin-Jones at aurora.delespin-jones@dc.gov or Jennifer Adu at Jennifer.Adu@dc.gov or by calling (202) 724-5622.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, DECEMBER 7, 2016
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Mafara Hobson, Jake Perry

- Protest Hearing (Status)** **9:30 AM**
Case # 16-PRO-00102; Shallamar Enterprises, LLC, t/a Capitol Hill Tandor and Grill, 419 8th Street SE, License #60689, Retailer CR, ANC 6B
Application to Renew the License
- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-CC-00100; Kamvs, LLC, t/a Van Ness Liquors, 4201 Connecticut Ave NW, License #75512, Retailer A, ANC 3F
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-CMP-00628; Ima Pizza H Street, LLC, t/a H & Pizza, 1118 H Street NE, License #89158, Retailer CR, ANC 6A
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-251-00161; Georgene Thompson, t/a Player's Lounge, 2737 Martin Luther King, Jr., Ave SE, License #1271, Retailer CN, ANC 8C
Failed to Make Available Security Footage to an ABRA Investigator
- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-CMP-00614; Laurio Plaza, Inc., t/a Lauriol Plaza; 1835 18th Street NW, License #24814, Retailer CR, ANC 2, ANC 2B
No ABC Manager on Duty

Board's Calendar
December 7, 2016

Show Cause Hearing (Status) 9:30 AM

Case # 16-CMP-00634; Miso Hungry, Inc., t/a Sushi Go Round & Tapas, 705
7th Street NW, License #71110, Retailer CR, ANC 2C

No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 16-CMP-00622; Maggiano's Holding Corporation, t/a Maggiano's
5333 Wisconsin Ave NW, License #72256, Retailer CR, ANC 3E

No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 16-CMP-00645; Queen of Sheba, Inc., t/a Queen of Sheba, 1503 9th
Street NW, License #73644, Retailer CR, ANC 6E

No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 16-CC-00044; Acott Ventures, t/a Shadow Room; 2131 K Street NW
License #75871, Retailer CN, ANC 2A

Sale to Minor Violation

Show Cause Hearing (Status) 9:30 AM

Case # 16-CC-00079; Inner Circle, 1223, LLC, t/a Dirty Martini Inn Bar, 1223
Connecticut Ave NW, License #83919, Retailer CN, ANC 2B

Sale to Minor Violation

Show Cause Hearing* 10:00 AM

Case # 15-CMP-00741; Green Island Heaven and Hell, Inc., t/a Green Island
Café/Heaven & Hell, 2327 18th Street NW, License #74503, Retailer CT, ANC
1C

No ABC Manager on Duty

Motion Hearing* 11:00 AM

Case # 16-PRO-00045; Hanks on the Hill, LLC, t/a Hanks Oyster Bar, 633
Pennsylvania Ave SE, License #89718, Retailer CR, ANC 6B

Oral Argument

**BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA AT 1:00 PM**

Show Cause Hearing* 1:30 PM

Case # 16-CMP-00335; TGR, Inc., t/a Cities DC, 1909 K Street NW, License
#77812, Retailer CR, ANC 2B

No ABC Manager on Duty, Interfered with an Investigation

Board's Calendar
December 7, 2016

Protest Hearing*

2:00 PM

Case # 16-PRO-00021; Chaplin Restaurant DC, LLC, t/a Chaplin, 1501 9th Street NW, License #95700, Retailer CR, ANC 6E,

Application to Renew the License

This hearing has been continued to February 1, 2017 at 4:30 pm.

Protest Hearing*

2:30 PM

Case # 16-PRO-00042; Roof Top DC, LLC, t/a Bar Deco, 717 6th Street NW License #97418, Retailer CR, ANC 2C

Application to Renew the License

***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
INVESTIGATIVE AGENDA**

**WEDNESDAY, DECEMBER 7, 2016
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, December 7, 2016 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#16-CMP-00738, Touche., 1123 H Street N.E., Retailer CT, License # ABRA-096779

2. Case#16-251-00213, Alero Restaurant & Lounge, 1301 U Street N.W., Retailer CR, License # ABRA-071881

3. Unlicensed Establishment, Quality Inn & Suites Hotel, 1600 New York Avenue N.E.

4. Case# 16-AUD-00067, Lindys Bon Appetit, 2040 I Street N.W., Retailer CR, License # ABRA-023533

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
LICENSING AGENDA**

**WEDNESDAY, DECEMBER 7, 2016 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

1. Review Request to Extend Safekeeping of License – Fifth Request. Original Safekeeping Date: 7/1/2005. ANC 2F. SMD 2F05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *The Roberts Law Group, PLLC*, 1029 Vermont Avenue NW, Retailer CN, License No. 083728.

2. Review Application for Summer Garden with seating for 49 patrons. *Proposed Hours of Operation of Summer Garden:* Sunday-Thursday 6:30am to 2am, Friday-Saturday 6:30am to 3am. *Proposed Hours of Alcoholic Beverage Sales and Consumption for Summer Garden:* Sunday-Thursday 11am to 1:30am, Friday-Saturday 11am to 2:30am. ANC 2C. SMD 2C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Penn Quarter Sports Tavern*, 639 Indiana Avenue NW, Retailer CT, License No. 076039.

3. Review Application for Summer Garden with seating for 40 patrons. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:* Sunday-Saturday 11am to 2am. ANC 1C. SMD 1C07. There is a pending Show Cause Hearing and the Establishment owes fines. ANC 1C protested the establishment's renewal application. No conflict with Settlement Agreement. *Green Island Café/Heaven & Hell*, 2327 18th Street NW, Retailer CT, License No. 074503.

4. Review Application for Manager's License. *Jason D. Williams*-ABRA 104827.

***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.**

DISTRICT OF COLUMBIA COMMISSION ON THE ARTS AND HUMANITIES**FY2017 BOARD OF COMMISSIONERS
MONTHLY MEETING SCHEDULE**

This notice outlines the schedule of the regular meetings of the Board of Commissioners of the District of Columbia Commission on the Arts and Humanities (DCCAHA). The meetings are held with an open public comment period, the public is encouraged to attend. The meetings are held at 200 I Street, SE, Suite 1400, Washington, DC. An agenda for each meeting will be posted on the DCCAHA website at <http://dcarts.dc.gov/page/commissioner-meetings>. Schedule is subject to change.

For further information, please contact the front desk at (202) 724-5613.

DATE	TIME	ROOM NUMBER
Thursday, December 15, 2015	3:30 PM	Suite 1400
Thursday, January 26, 2016	3:30 PM	Suite 1400
Thursday, February 23, 2016	3:30 PM	Suite 1400
Thursday, March 23, 2016	3:30 PM	Suite 1400
Thursday, April 27, 2016	3:30 PM	Suite 1400
Thursday, May 25, 2016	3:30 PM	Suite 1400
Thursday, June 29, 2016	3:30 PM	Suite 1400

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

PUBLIC NOTICE

2017 REGULAR MEETING SCHEDULE

The Construction Codes Coordinating Board has scheduled Regular Meetings on the following dates and times in 2017:

January 19, 2017	10:30 AM-12:30 PM
February 16, 2017	10:30 AM-12:30 PM
March 16, 2017	10:30 AM-12:30 PM
April 20, 2017	10:30 AM-12:30 PM
May 18, 2017	10:30 AM-12:30 PM
June 15, 2017	10:30 AM-12:30 PM
July 20, 2017	10:30 AM-12:30 PM
August 17, 2017	10:30 AM-12:30 PM
September 21, 2017	10:30 AM-12:30 PM

All of the meetings will be held at the following location:

**Department of Consumer and Regulatory Affairs
1100 Fourth Street, SW
Fourth Floor Conference Room (E4302)
Washington, D.C. 20024**

The meeting location is on the Metro Green Line, at the Waterfront/SEU stop. Limited paid parking is available on site.

Board meeting agendas and minutes are available on the website of the Department of Consumer and Regulatory Affairs at <http://dcra.dc.gov/page/construction-codes-coordinating-board-cccb-meetings> and/or on the website of the Board of Ethics and Government Accountability at <http://www.open-dc.gov/public-bodies/meetings>.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF COMMUNITY MEETINGS

CHILD DEVELOPMENT FACILITIES: LICENSING REGULATIONS

The Office of the State Superintendent of Education (OSSE), Division of Early Learning hereby announces that it will hold community meetings regarding the recently published regulations for the licensing of child development facilities (5A DCMR Chapter 1) on the following dates:

DATE OF MEETING	TIME OF MEETING	LOCATION
December 6, 2016	5:00 – 7:00 p.m.	National Children’s Center (NCC) 3400 Martin Luther King Jr. Ave. SE Washington, DC 20032
December 9, 2016	2:00 – 4:00 p.m.	Tenley-Friendship Neighborhood Library 4450 Wisconsin Ave. NW Washington, DC 20016
December 15, 2016	2:00 – 4:00 p.m.	Shaw (Watha T. Daniel) Neighborhood Library 1630 Seventh St. NW Washington, DC 20001
December 16, 2016	10:00 a.m. – 12:00 p.m.	Office of the State Superintendent of Education 810 First St. NE Washington, DC 20002
December 20, 2016	2:00 – 4:00 p.m.	Bellevue (William O. Lockridge) Neighborhood Library 115 Atlantic St. SW Washington, DC 20032
January 24, 2017	6:30 – 8:30 p.m.	Mary’s Center 2333 Ontario Rd. NW Washington, DC 20009

Translation will be provided if requested. For additional information, please contact:

Daryl Johnson
Community Outreach Specialist
Division of Early Learning
Office of the State Superintendent of Education
810 First St. NE, Ninth Floor
Washington, DC 20002
Office: (202) 741-5937
Cell: (202) 230-6890
Daryl.Johnson@dc.gov

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF FUNDING AVAILABILITY****FISCAL YEAR 2017****ADULT AND FAMILY EDUCATION PROGRAM GRANT****Request for Application (RFA) Release Date: January 23, 2017 (12:00 noon EST)**

The Office of the State Superintendent of Education (OSSE) is the District of Columbia agency responsible for administering the Adult and Family Education Program (AFE), a federal initiative authorized by the Adult Education and Family Literacy Act, Title II – Workforce Innovation and Opportunity Act (WIOA) of 2014 – Public Law 113-128. The AFE grant program is also supported with a match of local funds, as required by Title II, Section 222(b) of WIOA.

OSSE will award, on a competitive basis, multi-year grants (minimum of three years) to eligible providers of demonstrated effectiveness for the purpose of developing, implementing and improving adult education within the District of Columbia. Eligible participants are those:

- who have attained 16 years of age;
- who are not enrolled or required to be enrolled in secondary school under State law; and
- who are basic skills deficient;
- do not have a secondary school diploma or its recognized equivalent, and has not achieved an equivalent level of education; or
- are English language learners.

Grant funds will be used to provide services to individuals who are at least 16 years of age; who are not enrolled or required to be enrolled in secondary school and who have low level literacy skills, do not have a high school diploma or its equivalent, or are English language learners. Grant funding shall be used to provide services to District residents with barriers to employment to increase access to and opportunities for the employment, education, training, and support services they need to succeed in the labor market.

An eligible provider is an organization that has demonstrated effectiveness in providing adult education activities to eligible individuals and may include: (1) a local education agency; (2) a community-based or faith-based organization; (3) a volunteer literacy organization; (4) an institution of higher education; (5) a public or private non-profit agency; (6) a library; (7) a public housing authority; (8) a non-profit institution with the ability to provide adult education and literacy services; (9) a consortium or coalition of agencies organizations, institutions, libraries or authorities described above; or (10) a partnership between an employer and an entity described above.

To determine if an applicant is an organization of demonstrated effectiveness, all applicants will be required to provide evidence of their ability to improve the skills of adults with low level

literacy skills and/or English language learners. Prior grant recipients will be required to provide data from OSSE's management information system – Literacy Adult Community Education System (LACES). Additionally, local program self-assessment and monitoring data may be provided as evidence of how the organization has met the state's negotiated performance measures for students at all levels, including adults with low-level literacy skills and English language learners. New applicants will be required to describe and provide evidence of student achievement of core outcomes for adults with low-level literacy skills and English language learners, including student learning gains, acquisition of high school diploma or General Education Development (GED) credential, and entrance into postsecondary education, training and/or employment. Each application will be reviewed to determine whether it meets the standard of demonstrated effectiveness.

The Request for Application (RFA) will be released on January 23, 2017. The RFA will be posted on the [District of Columbia Office of Partnerships and Grant Services website](http://opgs.dc.gov/) at <http://opgs.dc.gov/>, on the OSSE website at <http://osse.dc.gov/service/adult-and-family-education-grant-competitions-matching-funds-and-re-grants>, and on the main page of OSSE's [Enterprise Grants Management System \(EGMS\)](http://grants.osse.dc.gov), at grants.osse.dc.gov.

Pre-Application Conference and Mandatory Notice of Intent to Apply

A pre-application conference will be held on Monday, January 30, 2017 from 10:00 am to 12:00 noon **and** Friday, February 3, 2017 from 1:00 to 3:00 pm. **The Notice of Intent to Apply Form must be completed and submitted electronically by Friday, February 17, 2017 to OSSE Adult and Family Education at osse.afeta@dc.gov.**

For additional information, contact the staff below in the Office of the State Superintendent of Education, Adult and Family Education program.

Name	Email Address	Phone Number
Stacey Downey	Stacey.Downey@dc.gov	(202) 727-8446
Tracy Richard	Tracy.Richard@dc.gov	(202) 741-5531

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF PUBLIC CHARTER SCHOOL FINANCING AND SUPPORT**

**DISTRICT OF COLUMBIA
PUBLIC CHARTER SCHOOL CREDIT ENHANCEMENT FUND COMMITTEE**

2017 MEETING SCHEDULE

The Office of the State Superintendent of Education (OSSE), District of Columbia Public Charter School Credit Enhancement Fund Committee hereby announces that it will hold meetings on the following dates at 810 First St. NE, Ninth Floor:

DATE OF MEETING	TIME OF MEETING
January 19, 2017	12:30-1:30 p.m.
February 16, 2017	12:30-1:30 p.m.
March 16, 2017	12:30-1:30 p.m.
April 20, 2017	12:30-1:30 p.m.
May 18, 2017	12:30-1:30 p.m.
June 15, 2017	12:30-1:30 p.m.
July 20, 2017	12:30-1:30 p.m.
August 17, 2017	12:30-1:30 p.m.
September 21, 2017	12:30-1:30 p.m.
October 19, 2017	12:30-1:30 p.m.
November 16, 2017	12:30-1:30 p.m.
December 21, 2017	12:30-1:30 p.m.

For additional information, please contact:

Debra Roane
Financial Program Specialist
Office of Public Charter School Financing and Support
Office of the State Superintendent of Education
810 First St. NE, Eighth Floor
Washington, DC 20002
Cell: (202) 412-5907
Desk: (202) 478-5940
Debra.Roane@dc.gov

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6964 to Northeast Iron Works, Inc. to operate an existing non-auto body paint spray booth at 2632 Douglas Street NE, Washington DC. The equipment is used primarily to paint ornamental metalwork (such as hand railings), but could be used to paint other metal, plastic, or wood products. The contact person for the facility is Daniel Pronio, Vice President, at (202) 529-9440.

The proposed emission limits are as follows:

- a. No person shall discharge into the atmosphere more than fifteen (15) pounds of volatile organic compound (VOC) emissions in any one (1) day, nor more than three pounds (3 lb.) in any one (1) hour, from any combination of articles, machines, units, equipment, or other contrivances at a facility, unless the uncontrolled VOC emissions are reduced by at least ninety percent (90%) overall capture and control efficiency. [20 DCMR 700.2]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]
- c. Visible emissions shall not be emitted into the outdoor atmosphere from the paint spray booth. [20 DCMR 107 and 606]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after January 3, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

**MEDICAID FEE SCHEDULE FOR
HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS
WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

The Department of Health Care Finance (DHCF), in accordance with the requirements in 29 DCMR § 1901.2, published in the *D.C. Register* on August 12, 2016 (63 DCR 010446), and 29 DCMR § 988, announces publication of the Medicaid Fee Schedule setting forth the reimbursement rates, effective January 1, 2017, for services available to participants under the Medicaid Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).

The Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), operates the ID/DD Waiver under the supervision of DHCF. 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. An 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; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2016 Supp.)), and subsequently CMS approved the amendment effective September 24, 2015.

As required under 29 DCMR § 1901.2, DHCF is identifying through this Public Notice the changes in the reimbursement rates for services rendered on or after December 26, 2016, for the twenty-four (24) ID/DD Waiver services listed in 29 DCMR § 1901.1. The new rates align with ID/DD Waiver Year 5, include the 2017 D.C. Living Wage of \$13.95 per hour, and are expressly subject to the service and other limitations described in the ID/DD Waiver and applicable rules. DHCF is increasing the reimbursement rates for the following seventeen (17) ID/DD Waiver services as follows: (1) Host Home without Transportation Services, 29 DCMR § 1915; (2) In-Home Supports Services, 29 DCMR § 1916; (3) Creative Arts Therapies Services, 29 DCMR § 1918; (4) Behavioral Support Services, 29 DCMR § 1919; (5) Day Habilitation Services, 29 DCMR § 1920; (6) Employment Readiness Services, 29 DCMR § 1922; (7) Family Training Services, 29 DCMR § 1924; (8) Individualized Day Supports Services, 29 DCMR § 1925; (9) Occupational Therapy Services, 29 DCMR § 1926; (10) Physical Therapy Services, 29 DCMR § 1928; (11) Residential Habilitation Services, 29 DCMR § 1929; (12) Respite Services, 29 DCMR § 1930; (13) Speech, Hearing and Language Services, 29 DCMR § 1932; (14) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933; (15) Supported Living Services, 29 DCMR § 1934; (16) Wellness Services, 29 DCMR § 1936; and (17) Companion Services, 29 DCMR § 1939. For Personal Emergency Response System (PERS) Services, 29 DCMR § 1927, DHCF has not changed the reimbursement rate for initial installation, training, and testing, but the monthly rental, maintenance and service fee has increased. For Environmental Accessibility Adaptation Services, 29 DCMR § 926; One-Time Transitional Services, 29 DCMR § 1913; and Vehicle Modification Services, 29 DCMR § 1914,

DHCF has not changed the reimbursement rates. For Personal Care Services, 29 DCMR § 1910, and Skilled Nursing Services, 29 DCMR § 1931, DHCF will reimburse providers at the rate set forth in the Medicaid Fee Schedule for the Medicaid State Plan, and for Dental Services, 29 DCMR § 1921, DHCF will continue to reimburse providers at the rate set forth in the Medicaid Fee Schedule for the Medicaid State Plan increased by twenty (20) percent.

These reimbursement rates for each service will be included on the Medicaid Fee Schedule for the ID/DD Waiver and will become effective thirty (30) calendar days after publication of this notice in the *D.C. Register*. The Medicaid Fee Schedule for the ID/DD Waiver is located on the DHCF website at <https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload>. For further information or questions regarding this fee schedule update, please contact Bidemi Isiaq, Associate Director, DHCF, at Bidemi.Isiaq@dc.gov or via telephone at (202) 442-9202.

DEPARTMENT OF HEALTH CARE FINANCE**PUBLIC NOTICE****MEDICAID FEE SCHEDULE UPDATES FOR CPT-HCPCS CODES**

The Department of Health Care Finance (DHCF), in accordance with the requirements set forth in Section 988 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations, published January 1, 2016 (63 DCR 000040), announces changes to the codes and rates for reimbursement of medical services and procedures billed by physicians and other health care providers that will go into effect on January 1, 2017.

Each year, the national HCPCS code changes are released in early to mid-November, and Medicare publishes updated fee schedules in November and December for medical services billed by physicians and other health care providers, including but not limited to physician services, physician-administered drugs, laboratory services, anesthesia, and Durable Medical Equipment (DME). Under the District of Columbia's State Plan for Medical Assistance, these services, with the exception of physician-administered chemotherapy drugs, are reimbursed at eighty percent (80%) of the Medicare rate as established by the Centers for Medicare and Medicaid Services. Due to the timing of the publications of the HCPCS code changes and Medicare fee schedules, DHCF will not be able to provide a listing of the changes to the Medicaid fee schedule thirty (30) days in advance of the changes. However, DHCF will provide a comprehensive listing of all changes on the DC Medicaid website <http://www.dc-medicaid.com> and through a transmittal no later than February 28, 2017.

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, or via telephone at (202) 481-3375.

**DEPARTMENT OF HEALTH
HEALTH PROFESSIONAL LICENSING ADMINISTRATION**

NOTICE OF MEETING

Board of Medicine
November 30, 2016

On November 30, 2016 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

The meeting will be open to the public from 8:30 am to 10:30 am to discuss various agenda items and any comments and/or concerns from the public.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will then move to Closed Session from 10:30 am until 4:45 pm to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Frank B. Meyers, J.D.

DEPARTMENT OF HEALTH**VITAL RECORDS DIVISION****NOTICE OF AGENCY TEMPORARY CLOSING**

The office of the Vital Records Division, located at 899 North Capitol Street, NE, Washington DC 20002, will be temporarily closed to the public on Thursday, December 15th, 2016, from 2:30 p.m. to 4:45 p.m.

During the temporary closure, copies of District of Columbia birth and death records may be ordered via mail, phone or online as follows:

Phone: (877) 572-6332

Online: <http://doh.dc.gov/service/vital-records>

Mail: http://doh.dc.gov/sites/default/files/dc/sites/doh/service_content/attachments/DC_Birth_Application.pdf

The office will reopen to the public on Friday, December 16, 2016, for our normal business hours.

We apologize for any inconvenience this may cause you. Thank you for your consideration.

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****Event Venue and Catering**

KIPP DC is seeking a venue for a seated dinner and award ceremony for up to 750 people on Friday, June 2, 2017. Interested vendors should be able to fulfill all catering and event support needs. Proposals will be accepted until 5:00 PM on Friday, December 16, 2016. Please contact joseph.hassine@kipfdc.org for a full RFP or with any questions.

MERIDIAN PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Financial/Accounting Services

The Meridian Public Charter School solicits proposals for Financial/Accounting Services.

The full text of the request for proposals can be obtained by emailing Michael Russell at mbids@meridian-dc.org.

Email questions to mbids@meridian-dc.org with the subject line as “Financial/Accounting Services”.

Deadline for submissions is December 1st, 2016 by 5pm Eastern Time.

Please email all questions and submit final proposals to mbids@meridian-dc.org.

Mr. Michael Russell
Meridian Public Charter School
Business Manager

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

GAS TARIFF 2016-01, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S RESIDENTIAL ESSENTIAL SURCHARGE TARIFF

AND

FORMAL CASE NO. 1127, IN THE MATTER OF THE COMMISSION'S ESTABLISHMENT OF A DISCOUNT PROGRAM FOR LOW-INCOME NATURAL GAS CUSTOMERS 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 ("D.C. Code") and in accordance with Section 2-205 of the D.C. Code,¹ of its final action to approve the proposed Residential Essential Service ("RES") Surcharge of Washington Gas Light Company ("WGL").² The Commission issued a Proposed Tariff ("NOPT"), which was published in the *D.C. Register*, on October 7, 2016, giving notice of the Commission's intent to act on WGL's proposed RES Surcharge.³ No Comments were filed in response to the NOPT.

2. On July 13, 2016, the Commission, in Order No. 18263, approved WGL's proposed RES Surcharge Tariff and directed WGL to file an updated RES Surcharge Tariff based on the most recent heating season.⁴ The RES Surcharge consists of a Current Factor and Reconciliation Factor. On August 12, 2016, WGL, as directed in Order No. 18263, submitted an updated RES Surcharge based on the immediately prior heating season's participation rate with accompanying work papers.⁵ On September 21, 2016, WGL submitted corrections to its August 12, 2016 filing.⁶

3. In the RES Surcharge, WGL sets for the process to be used to recover from its non-RES customers the costs of the RES Program in accordance with the following tariff pages:

¹ D.C. Code § 34-802 (2001); D.C. Code § 2-205 (2001).

² *Formal Case No. 1127, In the Matter of the Commission's Establishment of a Discount Program for Low-Income Natural Gas Customers in the District of Columbia ("Formal Case No. 1127")*, Updated Residential Essential Service ("RES") Surcharge of Washington Gas Light Company, filed August 12, 2016 ("WGL's Updated RES Surcharge"); and *Formal Case No. 1127, Corrections to the Updated Residential Essential Service ("RES") Surcharge of Washington Gas Light Company*, filed September 21, 2016 ("WGL's Corrections").

³ 63 *D.C. Reg.* 012503-012505 (2016).

⁴ *Formal Case No. 1127*, Order No. 18263, ¶ 19, rel. July 13, 2016.

⁵ *Formal Case No. 1127*, WGL's Updated RES Surcharge.

⁶ *Formal Case No. 1127*, WGL's Corrections.

**GENERAL SERVICES TARIFF, P.S.C. of D.C. No. 3
Sixteenth Revised Page No. 1
Superseding Fifteenth Revised Page No. 1**

**P.S.C. of D.C. No. 3
Seventh Revised Page No. 4
Superseding Sixth Revised Page No. 4**

**P.S.C. of D.C. No. 3
Second Revised Page No. 5A
Superseding First Revised Page No. 5A**

**P.S.C. of D.C. No. 3
Fifth Revised Page No. 9B
Superseding Fourth Revised Page No. 9B**

**P.S.C. of D.C. No. 3
Second Revised Page No. 9C
Superseding First Revised Page No. 9C**

**P.S.C. of D.C. No. 3
Sixth Revised Page No. 13
Superseding Fifth Revised Page No. 13**

**P.S.C. of D.C. No. 3
Second Revised Page No. 13F
Superseding First Revised Page No. 13F**

**P.S.C. of D.C. No. 3
First Revised Page No. 18B
Superseding Original Page No. 18B**

**P.S.C. of D.C. No. 3
First Revised Page No. 22E
Superseding Original Page No. 22E**

**P.S.C. of D.C. No. 3
Twelfth Revised Page No. 48
Superseding Eleventh Revised Page No. 48**

**P.S.C. of D.C. No. 3
Fourth Revised Page No. 65
Superseding Third Revised Page No. 65**

4. The RES Surcharge consists of a Current Factor and Reconciliation Factor. WGL's RES Surcharge shows that the Current Factor to be used during the 2016-2017 heating season is \$ 0.0029 with no Reconciliation Factor as this is the first year that the RES Surcharge would be utilized. In addition, WGL expresses its intent to collect the RES Surcharge during the November billing period.

5. The Commission at its regularly scheduled open meeting held on November 17, 2016, took final action approving WGL's RES Surcharge. The RES Surcharge will become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

**WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)**

NOTICE OF RESCHEDULED PUBLIC MEETING

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that a previously announced meeting scheduled for December 8, 2016, beginning at 10 a.m., will instead take place at 3 p.m. on the same day.

The meeting will take place in the Dr. Charlene Drew Jarvis Board Room at the Walter E. Washington Convention Center, 801 Mt. Vernon Place, NW. The Board's agenda includes reports from its Standing Committees.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority
t/a Events DC

(202) 249-3012
sean.sands@eventsdc.com

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17508-A of Palisades Montessori School, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the R-Use group requirements of Subtitle U § 203.1(g), to operate a daytime care use serving 24 children¹ with four staff in the R-1-B Zone at premises 2828 Hurst Terrace, N.W. (Square 1498, Lot 12).

HEARING DATE: November 16, 2016

DECISION DATE: November 16, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 2, 2016, from the Zoning Administrator, certifying the required relief. (Exhibit 6.)

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") 3D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a report dated November 3, 2016, indicating that at a regularly scheduled, properly noticed public meeting on November 2, 2016, at which a quorum was present, the ANC voted 8-0-0 to support the application, subject to ten conditions. (Exhibit 41.) ANC SMD 3D05 Commissioner Alma Gates appeared at the public hearing to testify in support and to provide additional comments on the ANC's proposed conditions. (Exhibit 54.)

The Office of Planning ("OP") submitted a timely report dated November 4, 2016, recommending approval of the application, subject to the conditions carried forward from the Board's prior Order No. 17508, with some revisions. (Exhibit 38.) Though OP's proposed conditions were largely identical to those proffered by the ANC, the Board addressed any differing language or requirements at the public hearing and adopted a version of the conditions that representatives of the Applicant, ANC, and OP agreed to be acceptable.

The District Department of Transportation ("DDOT") submitted a timely report dated

¹ The original application listed the number of children as 25; however, the Applicant testified that the maximum enrollment would be limited to 24 based on the requirements of the Office of the State Superintendent of Education ("OSSE"). For consistency with OSSE's requirements, a condition adopted by the Board also limits the maximum enrollment to 24 children. The caption has been revised accordingly.

November 2, 2016, indicating that it had no objection to the application. (Exhibit 37.)

The Board received 17 letters in support of the application and one letter in opposition.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the R-Use group requirements of Subtitle U § 203.1(g), to operate a daytime care use serving 24 children with four staff in the R-1-B Zone. 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 Subtitle X § 901.2 and Subtitle U § 203.1(g), 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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. The Board's approval shall be for a period of **SEVEN (7) YEARS** beginning on the effective date of this order.
2. Enrollment shall be limited to a maximum of 24 children, between the ages of two and five years, on site at any one time.
3. The maximum number of employees shall be four, including the Applicant.
4. The hours of operation shall be from 8:30 a.m. to 3:30 p.m., Monday through Friday, on those days when DC Public Schools are open.
5. The maximum number of special events per year shall be three, but not including any open-house(s) with five or less attendees.
6. Prior to the occurrence of each special event, the Applicant shall provide 30 days' written notice of such event to the neighbors within 200 feet of the Day Care Center and to ANC 3D. Such notice shall be calculated to reach the ANC prior to a regularly-scheduled ANC meeting.

**BZA APPLICATION NO. 17508-A
PAGE NO. 2**

7. The timing of special events shall coincide with the hours of operation of the day care center.
8. The center shall, at all times of operation, have a traffic plan in place, including, at a minimum, the following provisions:

For Arrival and Dismissal:

- a. Parents or other authorized persons (hereinafter referred to as “parent(s)”) dropping off or picking-up children attending the center may only queue up their vehicles directly in front of the subject property.
- b. At no time can there be more than three vehicles in front of the subject property. If there are three vehicles already in line, the next parent’s vehicle must continue down Hurst Terrace and drive around the block.
- c. At no time, should a vehicle block a driveway.
- d. There shall be no parent socializing which might impede the traffic flow during child drop-off and pick-up.
- e. Parents must not park their vehicles on the opposite (east) side of Hurst Terrace and walk the child(ren) accompanying them across the street to or from the center.
- f. At no time shall a child or children be let out of a vehicle on the driver’s side.

For Arrival:

- g. Drop-off shall be between 8:30 a.m. and 9:15 a.m. If a parent is late, he/she should park legally and walk the child(ren) accompanying him/her to the center.
- h. Parents are to remain in their vehicles. The Applicant or one of her staff will open the vehicle door and assist the child(ren) out.
- i. Parents are not to let children out of their vehicles until they are next in line and the Applicant or a staff member is available to assist the child(ren).
- j. After dropping off a child, the parent is not to make a U-turn, but to continue straight down Hurst Terrace.

For Dismissal:

- k. Children will be brought out to the parents' vehicles starting at 12:00 noon. Parents should line up no earlier than 11:50 a.m., and then walk to the center. Children enrolled in the extended day program shall generally be picked up no later than 3:10 p.m., but in no case later than 3:30 p.m.
- l. Parents are to remain in their vehicles. The Applicant or one of her staff will open the vehicle door and assist the child(ren) in.
- m. After picking up a child, the parent is not to make a U-turn, but to continue straight down Hurst Terrace.
- n. If a parent needs to pick up a child or children early, he/she must park legally on the opposite (east) side of Hurst Terrace (so as not to interfere with vehicles queuing up in front of the subject property to pick up children) prior to 11:50 a.m., and then walk to the center.

Generally:

- o. All caregivers shall be made familiar with, and told to abide by, the provisions of this traffic plan.
 - p. Failure to abide by the provisions of this traffic plan more than twice will cause the child(ren) of the non-compliant parent to be expelled from the center.
9. During drop-off and pick-up times, there shall be a staff member stationed outside the center monitoring the center traffic, assisting in the drop-off and pick-up of children and escorting the children to and from vehicles and the child development center.
10. Parents shall be notified at least once each year, and more often as necessary, of the provisions of the traffic management plan, of proper and safe drop-off and pick-up procedures, and of the consequences of noncompliance with the traffic management plan.

VOTE: 4-0-1 (Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Michael G. Turnbull 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 order.

FINAL DATE OF ORDER: November 21, 2016

**BZA APPLICATION NO. 17508-A
PAGE NO. 4**

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, 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 SUBTITLE A § 303, 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**

Appeal No. 18114-C of Ward 5 Improvement Association, pursuant to 11 DCMR §§ 3100 and 3101, from decisions of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy No. 1001838 on April 21, 2010, Certificate of Occupancy No. 1002471 on June 22, 2010, and Certificate of Occupancy No. CO1101152 on June 24, 2011, all for a restaurant with nightclub (not a sexually oriented business establishment), in the C-M-2 District at premises 2127 Queens Chapel Road, N.E. (Square 4258, Lot 34).¹

HEARING DATES: October 26, 2010 and September 27, 2011

DECISION DATES: December 7 and 14, 2010, and February 8, March 29, July 12, September 20, and November 8, 2011

DECISION DATES ON REMAND: June 16, July 21, August 4, September 22, October 6, and October 27, 2015

DECISION ON MOTION FOR STAY: November 2, 2016

ORDER ON MOTION FOR STAY

This appeal was submitted on June 11, 2010 by Don Padou on behalf of the Ward 5 Improvement Association (“Appellant”) to challenge the issuance of certificates of occupancy to the Stadium Group LLC to operate a “restaurant with nightclub, not a sexually oriented business establishment” at 2127 Queens Chapel Road, N.E., on the ground that the business was operating as a sexually oriented business (“SOBE”) and therefore was not permitted as a matter of right. Parties in this proceeding are the Appellant, the Department of Consumer and Regulatory Affairs (“DCRA”), Advisory Neighborhood Commission (“ANC”) 5C,² RF Holdings, LLC, the owner of the property, and RCX, LLC (“RCX”), the current lessee of the subject property.

¹ This order retains the caption used in the Decision and Order on Remand, including references to provisions in chapter 32 and the zone district in effect under the Zoning Regulations of 1958 when that decision was made. Because the 1958 Regulations were repealed as of September 6, 2016 and replaced by the 2016 Regulations, all other references to Title 11 DCMR in this order are to provisions in the 2016 Regulations. The repeal and adoption of the replacement text has no effect on the validity of the Board’s decisions in this case or of this order.

² The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. 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) (2001)). When the appeal was filed, the subject property was located within the boundaries of ANC 5B. As a result of a subsequent redistricting, ANC 5C is now the “ANC for the area within which the property that is the subject of the appeal is located,” and was therefore substituted for ANC 5B as a party to this proceeding.

See 11 DCMR § 3199.1(a)(4), definition of “Party” and Appeal No. 18114-A (order issued May 21, 2015). Neither ANC has participated in this appeal, and thus there are no statements of issues or concerns to which the Board can give great weight.

Following a public hearing, the Board of Zoning Adjustment (“Board” or “BZA”) voted on November 8, 2011 to deny the appeal. An order reflecting that decision was issued on August 24, 2012. That order was subsequently vacated and remanded by the District of Columbia Court of Appeals, in *Ward 5 Improvement Association v. District of Columbia Board of Zoning Adjustment*, 98 A.3d 147 (D.C. 2014). In its remand proceeding, the Board requested and received submissions from the parties, held additional deliberations, and voted, at its public meeting on October 27, 2015, to reverse the decision of the Zoning Administrator on the ground that the business was operating as a sexually oriented business establishment. An order on remand reflecting that decision (Order No. 18114-B) was issued on September 26, 2016.

On October 24, 2016, RCX filed a motion to stay the order on remand pending its appeal of that order to the District of Columbia Court of Appeals.³ The motion was opposed by the Appellant, who argued that the motion was moot because the Zoning Administrator had already revoked RCX’s current certificate of occupancy.

CONCLUSIONS OF LAW

The Board considered the motion for stay pending appeal at its public meeting on November 2, 2016. The Board does not agree with the Appellant that the motion is moot. The RCX motion seeks to stay the effectiveness of an enforcement action taken by DCRA pursuant to the Board’s order on remand, and the Board may now, on the basis of RCX’s motion, decide to stay the effectiveness of its order, and therefore the enforcement action, pending the outcome of RCX’s appeal to the Court of Appeals, notwithstanding DCRA’s prior action consistent with that order.

Pursuant to 11-Y DCMR § 701.2, the Board may order the effectiveness of a final decision and order of the Board stayed pending appeal of the decision and order to the Court of Appeals. A stay may be granted only upon the Board’s finding that (a) the party seeking the stay is likely to prevail on the merits of the appeal; (b) irreparable injury will result if the stay is denied; (c) opposing parties will not be harmed by the stay; and (d) the public interest favors the granting of the stay. (11-Y DCMR § 701.3.)

During its deliberations on the motion at the public meeting on November 2, 2016, the Board considered both a motion to grant the request for a stay and a motion to deny the request for a stay. In each case, the motion was seconded and voted upon, but neither motion was adopted by a majority of the Board members.

Under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799, as amended; D.C. Official Code § 6-641.07(h) (2001 Ed.), “The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order.” The Board’s Rules of

³ RCX stated that its petition for review of the order on remand was filed with the Court of Appeals on October 5, 2016.

Practice and Procedure likewise state that any final action on an appeal requires the concurrence of at least three of the five Board members. (11-Y DCMR § 102.8.)

A vote on a motion that fails to generate at least three affirmative votes operates to deny the relief that was the subject of the motion, unless the Board decides to defer consideration of the matter until a new vote can be taken at a later time. *See Hubbard v. District of Columbia Bd. of Zoning Adjustment*, 366 A.2d 427, 428 (D.C. 1976) (failure to achieve number of votes required by Board rule operated as denial of motion for rehearing). *See also Webster's New World Robert's Rules of Order: Simplified and Applied*, 62-65, 278-82 (1999) (majority vote, motions to reconsider the vote).

Because a majority of the Board did not vote to grant RCX's request for a stay, and because the Board did not decide to defer consideration of the request for another vote at a later decision meeting, the motion by RCX to stay the effectiveness of the Decision and Order on Remand, pending RCX's appeal of that decision and order to the District of Columbia Court of Appeals, is deemed denied without the Board making any determination as to whether the requirements for granting a stay were or were not met. *See Application No. 16710 of Vinay Pande* (2001). Accordingly, it is **ORDERED** that the motion for stay is **DENIED**.

A motion to grant RCX's Motion for Stay failed for lack of votes:

VOTE: 2-1-2 (Frederick L. Hill and Jeffrey L. Hinkle voting to grant the stay; Robert E. Miller opposed; Anita Butani D'Souza not participating; one Board seat vacant).

A motion to deny RCX's Motion for Stay failed for lack of votes:

VOTE: 2-1-2 (Robert E. Miller voting to deny the stay; Frederick L. Hill and Jeffrey L. Hinkle opposed; Anita Butani D'Souza not participating; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved the issuance of this order.

FINAL DATE OF ORDER: November 17, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18474-A of Wagtime LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the MU-Use Group E requirements of Subtitle U § 513.1(a), to establish an animal care and boarding use in the MU-4 Zone at premises 1232 9th Street N.W. (Square 368, Lot 911).

HEARING DATE: November 2, 2016

DECISION DATES: November 2 and November 16, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 2F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a report, dated October 19, 2016, indicating that at a regularly scheduled, properly noticed public meeting on October 5, 2016, at which a quorum was present, the ANC voted 5-0-2 to support the application. (Exhibit 33.)

The Office of Planning ("OP") submitted a timely report dated October 21, 2016, recommending approval of the application, subject to three conditions carried forward from the Board's prior Order No. 18474, which granted relief to establish this use. (Exhibit 34.) The Board adopted the three conditions recommended by OP. The District Department of Transportation ("DDOT") submitted a timely report dated October 6, 2016, indicating that it had no objection to the application. (Exhibit 31.)

Michael Hickey, an owner of the adjacent building, testified in opposition to the application and submitted additional materials to the record. (Exhibit 35.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the MU-Use Group E requirements of Subtitle U § 513.1(a),

to establish an animal care and boarding use in the MU-4 Zone. 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 Subtitle X § 901.2 and Subtitle U § 513.1(a), 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7, AND WITH THE FOLLOWING CONDITIONS:**

1. No animal shall be permitted on the outdoor deck between the hours of 6:00 p.m. and 9:00 a.m.
2. No more than five animals shall be permitted on the outdoor deck at any one time, and no dog shall be allowed on the deck for a period greater than 30 minutes per day.
3. An employee of the applicant shall remain on the outdoor deck at all times when an animal is present.

VOTE:¹ **4-0-1** (Frederick L. Hill, Jeffrey L. Hinkle, Anita Butani D'Souza, and Peter G. May (by absentee vote) to APPROVE; 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 17, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

¹ The vote reflected in this Order was taken on November 16, 2016 when the Board, on its own motion, reopened the record to revisit its decision from November 2, 2016. On November 2, 2016, the Board voted 4-0-1 to approve the application with four conditions. In revisiting its decision on November 16, 2016, the Board determined that one originally-adopted condition was outside of the Board's jurisdiction, and therefore, eliminated that condition from the Order. No other aspect of the Board's approval was changed.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, 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. 18967 of Buddhist Congregational Church of America pursuant to 11 DCMR § 3104 for a special exception under § 1553 to construct a second-story addition to an existing place of worship that exceeds the 10% limitation on expansion of a nonresidential structure in the SSH/R-1-B District at premises 5401 16th Street, N.W. (Square 2718, Lot 44).

HEARING DATES: June 9, 2015; July 21, 2015

DECISION DATE: July 21, 2015

DECISION AND ORDER

Quy V. Do submitted this application on January 25, 2015, on behalf of the Buddhist Congregational Church of America (the “Applicant”), the owner of the property that is the subject of the application. The application requests a special exception under § 1553.2 of the Zoning Regulations to allow a second-story addition to an existing place of worship that exceeds the 10% limitation on expansion of a nonresidential structure in the Sixteenth Street Heights (SSH) - 1 Overlay/R-1-B District at 5401 16th Street, N.W. (Square 2718, Lot 44) (“Subject Property”). Following two public hearings, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 9, 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 4; Advisory Neighborhood Commission (“ANC”) 4C, the ANC in which the Subject Property is located; and the representative for ANC Single Member District 4C02. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on March 12, 2015, providing notice of the hearing to the Applicant, ANC 4C, 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 20, 2015 (62 DCR 3286).

Party Status. The Applicant and ANC 4C were automatically parties to this proceeding. No other persons requested party status.

Applicant’s Case. The Applicant provided evidence and testimony describing the proposed project — to construct a second-story addition to the existing worship building in order to create a new worship hall and convert the existing worship hall into a dining room and kitchen. The Applicant asserted that the application satisfied all requirements for special exception relief. In response to the Board’s direction, after the June 9, 2015, hearing on the Application, the Applicant engaged in discussions with ANC 4C and members of the community regarding their opposition to the project. Following those discussions, the Applicant submitted a letter

proffering a number of conditions to any approval, which were a result of discussions with the ANC and several neighbors and were aimed at addressing their concerns. (Exhibits 39, 39A.)

OP Report. By memorandum dated June 2, 2015, OP recommended approval of the application. OP's analysis concluded that the Applicant had met all of the requirements for special exception relief. (Exhibit 30.)

DDOT Report. By memorandum dated June 1, 2015, DDOT indicated no objection to approval of the special exception. (Exhibit 31.)

ANC Report. By letter dated April 8, 2014, ANC 4C indicated that it discussed the application at its regularly scheduled, properly noticed meeting on April 8, 2015, and, with a quorum present, voted 9-0 to oppose the application. (Exhibit 26.) The ANC explained that the Applicant had not responded to attempts by the ANC to contact the Applicant and had not sought the community's feedback on the proposed project. Additionally, the ANC stated that the surrounding community had conveyed concerns in the past related to noise levels at the Applicant's events, as well as improper parking and poor behavior by congregants on worship days. In a letter dated July 8, 2015, ANC 4C Commissioner Joseph Maloney indicated that, following discussions with the Applicant and community members, ANC 4C continued to oppose the application. (Exhibit 36.)

Persons in support. No persons appeared at the hearing to testify in support of the Applicant. The owners of the adjacent properties at 5335 16th Street, N.W. and 5405 16th Street, N.W. both filed letters in support. (Exhibit 27.)

Persons in opposition. Lenore Sek, a nearby property owner, submitted a letter (Exhibit 29) and testified in opposition at the June 9, 2015, hearing on the application. Ms. Sek stated that she has had problems with congregants parking in her yard and in the alley, as well as noise levels during festivals. Pedro Rubio, president of the Sixteenth Street Heights Civic Association, also submitted a letter (Exhibit 32) and testified in opposition at the June 9, 2015, hearing. Mr. Rubio also stated concerns regarding congregants parking on neighboring properties. Two other nearby residents also submitted letters in opposition stating concerns about parking. (Exhibits 34, 35.)

FINDINGS OF FACT

1. The Subject Property is an interior lot located on the east side of the street at 5401 16th Street, N.W., between Kennedy Street, N.W. and Colorado Avenue, N.W. (Square 2718, Lot 44).
2. The Subject Property is zoned SSH-1/R-1-B.
3. The Subject Property is improved with a one-story detached structure that consists of approximately 12,692 square feet of gross floor area and is used as a place of worship.

4. The Applicant proposes to construct a second-story addition to the existing structure in order to create a new worship hall and convert the existing worship hall into a dining room and kitchen. The proposed project would increase the building's gross floor area by 1,567 square feet to approximately 15,528.74 square feet, an increase of 11%.
5. Under § 1553 of the Zoning Regulations, an existing nonresidential use in the SSH Overlay may not be expanded by more than 10% except by special exception subject to the requirements in § 1553.2. Accordingly, the Applicant is required to obtain relief under this section to implement the proposed project.
6. Several nearby property owners submitted letters objecting to the application, stating that the Applicant's members often parked on neighboring properties on worship days and that the Applicant generated too much noise during events.
7. In response to these concerns, the Applicant has proffered several conditions to approval, discussed in detail below, in order to address noise and parking issues raised in the past.
8. The project will not increase the number of congregants at the Subject Property.
9. The Applicant will continue to provide 20 off-street parking spaces, as required by § 2101 of the Zoning Regulations.
10. No parking spaces are located on the lot between the principal building and the street right-of-way, and no spaces are located within public space.
11. The existing parking lot, which pre-dates the adoption of the SSH Overlay, is screened from contiguous residential property to the north by a wooden fence that is six feet in height, and is screened from the residential property to the south by a brick wall that is 48 feet in height and eight inches thick.
12. Lighting fixtures used to illuminate the parking spaces are aimed at the surface of the lot.
13. The R-1 District is "designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes." (11 DCMR § 200.1.) The provisions of the R-1 District use regulations "are intended to stabilize the residential areas and to promote a suitable environment for family life." (11 DCMR § 200.2.) Churches and other places of worship are generally permitted as a matter of right in the R-1 District, but, like all other proposed nonresidential uses, require special exception approval on properties located within the SSH Overlay District. (11 DCMR §§ 201.1(b), 1553.2.)

14. Pursuant to § 1551.2, the purposes of the SSH Overlay District are to:

- (a) Promote the conservation, enhancement, and stability of the district's low-density, single-family neighborhood for housing and neighborhood-related uses;
- (b) Control the expansion of nonresidential uses, and/or further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external negative impacts of new nonresidential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality; and
- (c) Allow neighborhoods to continue to provide a range of health and social service facilities as well as private institutions that provide cultural and religious enrichment and economic vitality, but within the framework of improved public review and control over the external effects of nonresidential uses. The objective is to make more compatible the Comprehensive Plan's goals and policies for maintaining the quality and stability of residential neighborhoods with other policies related to the reasonable provision of human services throughout the District of Columbia.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 1553.2 of the Zoning Regulations to construct a second-story addition to an existing place of worship that exceeds the 10% limitation on expansion of a nonresidential structure in the SSH-1/R-1-B District. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008), to grant special exceptions, as provided in the Zoning Regulations, where it will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.) Pursuant to § 1553.2, the expansion of an existing nonresidential use in excess of 10% of gross floor area may be permitted by special exception in the SSH Overlay District, subject to certain requirements, including that the expanded use be capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions. Further, the site must provide adequate, appropriately located and screened off-street parking sufficient for the needs of the maximum number of persons who can use the facility at one time. Based on the findings of fact, the Board concludes that the requested special exception can be granted consistent with the requirements of § 1553.2.

The Board credits the Applicant's testimony in concluding that the place of worship will be capable of continuing to be operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions. Although there were letters and testimony objecting to the application based on a history of noise and parking issues, the Board finds that the conditions proffered by the Applicant will address these concerns. Specifically, the Applicant will have personnel monitor and direct parking

during ceremonies and events to ensure that members do not park in the alley or on neighboring property. Further, the Applicant will abide by the District's noise control regulations and will hold events mainly in the future dining hall to contain noise within the structure. Additionally, the Applicant has identified members who will act as community liaisons to be contacted should there be any problems implementing these conditions.

Consistent with the requirements of the SSH Overlay District, the Applicant will provide adequate, appropriately located and screened off-street parking. The Applicant will continue to provide 20 parking spaces at the Subject Property, as required by § 2101 of the Zoning Regulations. No parking spaces are located on the lot between the principal building and the street right-of-way, or within public space. The existing parking lot, which pre-dates the adoption of the SSH Overlay, is screened from contiguous residential property to the north by a wooden fence that is six feet in height, and is screened from the residential property to the south by a brick wall that is 48 feet in height and eight inches thick.¹ Lighting fixtures used to illuminate the parking spaces are aimed at the surface of the lot.

The Board further concludes, based on the findings of fact as discussed above, that the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring property. The expanded place of worship will be consistent with the purposes of the SSH Overlay District to preserve the neighborhood quality by minimizing external negative impacts of a nonresidential use, and to allow the neighborhood to continue to provide a facility for religious enrichment within the framework of improved public review and control over any external effects.

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 recommended approval of the application, concluding that the Applicant had met all of the requirements for special exception relief. For the reasons discussed above, the Board agrees with this conclusion.

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 "ANC Act").) ANC 4C voted to oppose the application, stating that the Applicant had not responded to

¹ Although the brick wall is not 12 inches thick, as required by § 1553.2(b)(3), both the parking lot and brick wall are conditions of the Subject Property that pre-date the adoption of the SSH Overlay District regulations and are, thus, "grandfathered" conditions, as the Applicant is not required to provide additional or new parking for this project. Further, the Board finds that this wall, though only eight inches thick, will fulfill the purpose and intent of this requirement by blocking noise.

attempts to contact the Applicant and had not sought the community's feedback on the proposed project. Additionally, the ANC stated that the surrounding community had conveyed concerns in the past related to the noise levels at events, as well as improper parking and poor behavior by congregants on worship days. In a letter dated July 8, 2015, Commissioner Maloney indicated that, following discussions with the neighborhood and the Applicant, ANC 4C continued to oppose the application.² With respect to contact between the ANC and the Applicant, the Board notes that, following the June 9, 2015, hearing on the application, the Applicant engaged the ANC and other community members regarding their concerns. The Applicant subsequently proffered a number of conditions to address these concerns, which the Board has made conditions of its approval. As discussed in more detail above, the Board finds that these conditions will ensure that the Applicant will manage noise and parking so that the use will not have an adverse effect on the community. Having discussed the ANC's issues and concerns, and explained how the order has addressed those issues and concerns, the Board has given the ANC the great weight required by the ANC Act.

CONCLUSION

For the reasons discussed above, the Board concludes that the Applicant has met the burden of proof for the requested special exception under § 1553.

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 5, AND SUBJECT** to the following **CONDITIONS**:

1. Parking and Traffic. The Applicant shall have personnel monitor and direct members' cars during ceremonies and events so that: members' driving will pose no danger to neighbors; no cars will block the traffic in the alley and surrounding streets; and no cars will be parked in the alley or on neighbors' properties, or block neighbors' garage entrances.
2. Noise. The Applicant shall abide the Noise Control Regulations set forth in Chapter 27 of Title 20 of the District of Columbia Regulations. Cultural events shall be held mainly in the future dining hall of the worship building in order to contain noises within the structure.
3. Community Liaison. The Applicant shall do its best to implement the above measures. However, if neighbors notice any problem(s) caused by its members, they should contact the members in charge of public relations, as stated in Exhibit 39A of the record for this application, as soon as possible. The Applicant shall notify neighborhood committees of upcoming events at its facilities and invite the community to participate in them. The

² The letter does not indicate that these comments were adopted by any vote by the ANC at a duly noticed public meeting. Accordingly, the comments cannot be viewed as those of the ANC, but are considered to be those of Commissioner Maloney.

Applicant shall communicate with the ANC on a biannual basis. The Church shall attend meetings with neighborhood committees as they are announced by Listserv.

4. Construction Phase. The Applicant shall store and contain construction materials and debris within the Subject Property.
5. Use of the Worship Building. The worship building, including its future dining hall, shall be used only by the Applicant's members and shall not be used by or rented to other institutions. The future dining hall at the worship building shall not generate additional occupant load beyond the existing one. Church members who attend ceremonies in the new worship hall are the same people who will use the new dining hall. Traffic generated by food delivery or trash removal shall be limited between 7:00 am and 7:00 pm, and shall not block traffic in the alley and surrounding streets.

VOTE: **3-0-2** (Lloyd J. Jordan, Robert E. Miller, and Jeffrey L. Hinkle to Approve; 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: January 15, 2016

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.

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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 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. 19241 of Ira L. Hartwell, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, and the rear yard setback requirements under § 404.1, to construct a sunroom¹ of an existing one-family dwelling in the R-2 District at premises 852 50th Place N.E. (Square 5177W, Lot 19).²

HEARING DATES: July 6, September 27, and November 16, 2016³
DECISION DATE: November 16, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum dated January 6, 2016, from the Zoning Administrator, certifying the required relief. (Exhibit 7.)

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”) 7C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. The ANC did not submit a report or participate in the hearing. At the July 6, 2016 hearing, the Board requested that the Applicant provide evidence that he presented the project to the ANC and also reached out to the neighbors. The Applicant indicated that he met with the ANC, but the ANC did not file a report. (Exhibit 26.)

The Office of Planning (“OP”) submitted a timely report dated June 28, 2016, recommending

¹ The Applicant originally planned to construct a sunroom and expand the porch of the subject property. Subsequently, at the public hearing on November 16, 2016, the Applicant testified that he no longer planned to expand the porch and submitted a revised Surveyor’s Plat and revised plans to that effect. (Exhibits 27 and 28.) The Board approved the revised plans and the caption has been revised to remove the reference to the porch expansion accordingly.

² This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to the 1958 Regulations which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). This Application was vested under the 1958 Regulations as the case was first heard prior to September 6, 2016. The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

³ The case was originally heard on July 6, 2016 and continued to September 27 and November 16, 2016.

approval of the application. (Exhibit 21.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 23.)

At the July 6, 2016 public hearing, the Board continued the hearing and requested:

- Revised plans to reflect OP's suggested landscaping and an updated surveyor's plat;
- Evidence of a presentation before the ANC and their written report; and
- Evidence of outreach to neighbors, including letters from adjacent property owners.

Letters in support of the application were submitted by the adjacent neighbors. (Exhibits 24 and 25.) At the November 16, 2016 hearing, the Applicant explained why no screening could be added and OP testified that it accepted the Applicant's explanation. Further, the Applicant testified that he had taken the porch down and did not intend to put it back up. Thus, the only construction planned was for the sunroom. The Applicant submitted a revised Surveyor's Plat and revised plans at the November 16 hearing to reflect those changes. (Exhibits 27 and 28.)

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 from § 223, not meeting the lot occupancy requirements under § 403.2, and the rear yard setback requirements under § 404.1, to construct a sunroom of an existing one-family dwelling in the R-2 District. 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 filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to §§ 3104.1, 223, 403.2, and 404.1, 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. It is therefore **ORDERED** that this application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED SURVEYOR'S PLAT AND REVISED PLANS AT EXHIBITS 27 AND 28.**

VOTE: 4-0-1 (Anita Butani D'Souza, Michael G. Turnbull, Frederick L. Hill⁴, and Jeffrey L. Hinkle to Approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

⁴ Board member Hill indicated that he had read the full record of the case in order to participate in deliberations.

FINAL DATE OF ORDER: November 21, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

**BZA APPLICATION NO. 19241
PAGE NO. 3**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19277 of Orpel Tucker (Sanders), as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions from the off-street parking requirements of Subtitle C § 703, and the daytime care requirements of Subtitle U § 203.1(g), to operate a child development center for 30 children and 14 staff in the R-1-B Zone at premises 3302 18th Street, N.E. (Square 4143, Lot 800).

HEARING DATES: June 14, 2016, July 19, 2016, September 27, 2016, and November 16, 2016²

DECISION DATE: November 16, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated March 25, 2016, from the Zoning Administrator (“ZA”), certifying the required relief. (Exhibit 4 – original.) A revised ZA’s memo, dated May 3, 2016 was also filed in the record. (Exhibits 27 and 31 – revised/duplicate.)

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”) 5B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. The ANC did not submit a report related to the application. A letter was filed by the Single Member District (“SMD”) Commissioner for SMD 5B03 which summarized the progress made by the Applicant in terms of improvements on the property and addressing the concerns expressed by neighbors. (Exhibit 72.) The SMD 5B03

¹ The application was originally filed under the 1958 Zoning Regulations, which were repealed as of September 6, 2016 and replaced by the 2016 Zoning Regulations. Based on the revised ZA’s memorandum (Exhibits 27 and 31), the application was amended to add relief from the off-street parking requirements of 11 DCMR § 2101.1 to the original request for a special exception under 11 DCMR § 201.1 for a child development center. As the case was not heard until after September 6, 2016 when the 2016 Zoning Regulations went into effect, the application was updated to converting the revised relief to the 2016 Zoning Regulations which went into effect on September 6, 2016. The updated relief is reflected in the caption above.

² The public hearing was postponed from June 14, 2016 and July 19, 2016. The Board heard the case on September 27, 2016, but continued the hearing to November 16, 2016.

Commissioner stated that he was not aware of any opposition to the application and he expressed support for the application.

The Office of Planning (“OP”) submitted an initial timely report noting that it could not make a recommendation because more information was needed to fully evaluate the application. (Exhibit 37.) OP filed a supplemental report recommending approval with one condition - that “[t]he Applicant work [with] DDOT to establish appropriate time restricted curbside parking signage along 18th Street to improve pick-up and drop-off operations.” (Exhibit 54.) At the end of the hearing of September 27, 2016, the Board continued the hearing and requested that the Applicant submit the following:

1. Revised landscaping plan, including screening for dumpsters;
2. Evidence of roof and/or window repairs to address neighbors’ concerns;
3. Letters from neighbors with updates regarding Applicant’s outreach and updated plans;
and
4. Proof of any attempt to meet with the ANC.

The Applicant submitted the requested documents, other than the ANC report, into the record. (See Exhibits 63-66.) OP filed a second supplemental report which was generally supportive of the Applicant implementing the landscape plan submitted to the Board. (Exhibit 69.) At the hearing of November 16, 2016, OP testified in support of the revised plans and made note of the Applicant’s efforts to address concerns expressed by neighbors.

The District Department of Transportation (“DDOT”) submitted a timely report dated July 12, 2016, indicating that it had no objection to the grant of the application. (Exhibits 39 and 62.) DDOT filed a supplemental report dated September 8, 2016, to analyze the case based on the 2016 Zoning Regulations. In that supplemental report, DDOT again expressed no objection to the application. (Exhibit 53.)

The Office of the State Superintendent of Education filed a report recommending approval of the application. (Exhibit 29.)

A petition in support containing 16 signatures was submitted into the record. (Exhibit 52.)

Two letters were filed in opposition to the application. The letter from the adjacent neighbor at 3304 18th Street, N.E. raised concerns about health and safety for neighbors and the children at the facility as impacted by the site’s environment (Exhibit 33), and the letter from a nearby neighbor residing at 1716 Kearny Street, N.E. raised a number of issues related to the environment and operations at the site. (Exhibit 34.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions from the off-street parking requirements of Subtitle C § 703 and the daytime care requirements of Subtitle U § 203.1(g), to operate a child development center for 30 children and 14 staff in the R-1-B Zone. 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 averse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle C § 703, and Subtitle U § 203.1(g), 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 61 – UPDATED ARCHITECTURAL DRAWING.**

VOTE: 4-0-1 (Anita Butani D’Souza, Michael G. Turnbull, Frederick L. Hill,³ and Jeffrey L. Hinkle 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 order.

FINAL DATE OF ORDER: November 21, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST

³ Mr. Hill noted that he read the record in the case in order to participate in the decision in the application.

IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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. 19292 of Orpel Tucker (Sanders), as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions from the off-street parking requirements of Subtitle C § 703, and the daytime care requirements of Subtitle U § 203.1(g), to operate a child development center for 28 children and 14 staff in the RF-1 Zone at premises 629 Columbia Road, N.W. (Square 3052, Lot 150).

HEARING DATES: June 14, 2016, July 19, 2016, September 27, 2016, and November 16, 2016²

DECISION DATE: November 16, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated March 25, 2016, from the Zoning Administrator ("ZA"), certifying the required relief. (Exhibit 8.) A revised memorandum from the ZA, dated May 3, 2016, was later filed in the record. (Exhibits 20 and 29 (duplicate).)

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") 1A and to owners of property located 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. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 8, 2016, at which a quorum was present, the ANC voted 8-0-0 to support the application with the condition that the Applicant use the parking space in back of the site as

¹ The application was originally filed under the 1958 Zoning Regulations, which were repealed as of September 6, 2016 and replaced by the 2016 Zoning Regulations. Based on the revised ZA's memorandum (Exhibits 20 and 29 (duplicate)), the application was amended to add relief from the off-street parking requirements of 11 DCMR § 2101.1 to the original request for a special exception under 11 DCMR § 201.1 for a child development center. As the case was not heard until after September 6, 2016 when the 2016 Zoning Regulations went into effect, the application was not vested under the 1958 Zoning Regulations and instead converted to the 2016 Zoning Regulations which went into effect on September 6, 2016. The updated relief is reflected in the caption above.

² The public hearing was postponed from June 14, 2016 and July 19, 2016. The Board heard the case on September 27, 2016, but continued the hearing to November 16, 2016.

an area for pick-up and drop-off of children. (Exhibit 35.) The Applicant agreed to this request. (Hearing Transcript of September 27, 2016, p. 118.)

The Office of Planning (“OP”) submitted an initial timely report dated July 12, 2016, noting that it could not make a recommendation because more information was needed to fully evaluate the application. (Exhibit 38.) OP filed a supplemental report dated September 16, 2016, stating that it is supportive of the Applicant’s provision of a daytime care facility at this location, but cannot yet recommend approval of the special exceptions requested because additional information is needed from the Applicant regarding location of the outdoor play area, the landscaping plan, and the criteria for meeting both Subtitle C § 703 related to reduced parking at the site and Subtitle X, Chapter 9 – Special Exceptions. (Exhibit 57, p. 1.)

At the end of the hearing of September 27, 2016, the Board continued the hearing and requested that the Applicant submit the following:

1. Landscaping plan;
2. Response to concerns raised in letter in opposition; and
3. Confirmation of the Applicant’s play area plan from the Office of the State Superintendent of Education (“OSSE”) or the Department of Parks and Recreation (“DPR”).

The Applicant submitted the requested documents into the record. (See Exhibits 60-65.) OP submitted a second supplemental report dated November 4, 2016, noting that the Applicant provided the requested information to OP for its consideration and recommending approval of the special exception relief. (Exhibit 66.) OP also noted that the District Department of Transportation (“DDOT”) approves of the application, with conditions (see below, herein), and OP stated that according to DDOT, the Applicant has agreed to meet DDOT’s conditions. At the hearing of November 16, 2016, OP testified in support of the application.

DDOT submitted a timely report dated July 12, 2016, proposing four conditions, and indicating that it had no objection to the grant of the application. (Exhibit 40.) The conditions proposed by DDOT are as follows:

1. Drop-off and pick-up employing vehicles shall occur only from the rear of the property using the public alley.
2. Vehicles shall access the rear of the site by entering the public alley to the east of the site from Columbia Road and exit via the alley west of the site to either Columbia Road or Irving Street.
3. Staff shall assist with pick-up and drop-off from vehicles, to prevent parking in the public alley.

4. To all clients, the Applicant shall provide information that includes a vehicle circulation plan that shows one-way access to the rear of the site, language notifying clients that parking is not allowed in the alley or on the north side of Columbia road, and a list of locations where parking is allowed, such as Georgia Avenue and Warder Street.

DDOT filed a supplemental report dated September 8, 2016, which reiterated these conditions and continued to express no objection to the application. (Exhibit 55.)

A letter from OSSE dated May 26, 2016 recommending approval of the application was filed into the record. (Exhibit 25.) The Applicant filed documentation of OSSE's approval of the playground plan in response to the Board's and OP's requests. (Exhibit 64.)

A petition in support containing 16 signatures was submitted into the record (Exhibit 43.)

One letter in opposition to the application was filed by the owner of the property adjacent to the site. The letter raised issues concerning excessive noise which disturbs neighbors, increased traffic volume and congestion, as well as dangerous conditions for neighbors, commuters, and the children created by the day care center operating on the busy street. (Exhibit 31.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions from the off-street parking requirements of Subtitle C § 703 and the daytime care requirements of Subtitle U § 203.1(g), to operate a child development center for 28 children and 14 staff in the RF-1 Zone. 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 Subtitle X § 901.2, Subtitle C § 703, and Subtitle U § 203.1(g), 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 62.**

VOTE: 4-0-1 (Anita Butani D'Souza, Frederick L. Hill³, Jeffrey L. Hinkle, and Michael G. Turnbull 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 order.

FINAL DATE OF ORDER: November 22, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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

³ Mr. Hill noted that he read the record to participate in the application.

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

441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001

PUBLIC NOTICE OF CLOSED MEETINGS FOR DECEMBER 2016

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on December 22, 2015, the Board of Zoning Adjustment voted 5-0-0 to hold *closed meetings telephonically on Mondays, December 5th, December 12th, and December 19th*, beginning at 4:00 p.m. for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board's meeting and hearing agendas for December 7th, December 14th, and December 21st.

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

**Frederick L. Hill, Chairperson, Anita Butani D'Souza, Vice-Chairperson,
Jeffrey L. Hinkle, Board seat vacant, and a Member of the Zoning Commission.
Clifford W. Moy, Secretary of the Board of Zoning Adjustment
Sara A. Bardin, Director, Office of Zoning.**

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 16-25
(DC Boathouse, LLC – Map Amendment @ Square 6)
November 21, 2016

THIS CASE IS OF INTEREST TO ANC 2A

On November 16, 2016, the Office of Zoning received an application from DC Boathouse, LLC (the “Applicant”) for approval of a map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 42 and 810 in Square 6 in northwest Washington, D.C. (Ward 2), on property located at 2601 and 2641 Virginia Avenue, N.W. The property is currently zoned RA-5. The Applicant is proposing a map amendment to rezone the property to MU-2. The rezoning is intended to facilitate the redevelopment of the Hall of Virginia site into a mixed-use multi-family apartment building.

The RA-5 zone generally provides for high-density residential use and also permits those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. The maximum density allowed is 6.0 floor area ratio (“FAR”) for an apartment house or hotel, and 5.0 FAR for any other use; the maximum height permitted is 90 feet; and the maximum lot occupancy is 75%.

The MU-2 zone generally provides for mixed-use development and the MU-2 zone specifically is intended to act as a buffer between adjoining non-residential and residential areas and to preserve and protect areas adjacent to non-residential uses or zones that contain a mix of row houses, apartments, offices, and institutions at a medium-to high density. The maximum density permitted is 6.0 FAR for residential use (7.2 FAR with the Inclusionary Zoning bonus) and 3.5 for non-residential use; the maximum height permitted is 90 feet; and the maximum lot occupancy is 80%

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 16-26
(Wisconsin Owner, LLC – Consolidated PUD and Related
Map Amendment @ Square 1732)
November 23, 2016**

THIS CASE IS OF INTEREST TO ANC 3E

On November 21, 2016, the Office of Zoning received an application Wisconsin Owner, LLC (the “Applicant”) for approval of a consolidated planned unit development (“PUD”) and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 45 and 49 in Square 1732 in northwest Washington, D.C. (Ward 3), on property located at 4620 Wisconsin Avenue. The property is currently zoned MU-4. The Applicant is proposing a PUD-related map amendment to rezone the property, for the purposes of this project, to MU-7.

The Applicant proposes to construct a mixed-use development of ground-floor retail and upper-floor residential uses. The building will contain approximately 130-140 residential units and 12,119 square feet of ground-floor retail use. The project will have a maximum height of 90 feet and a maximum density of 5.67 floor area ratio (“FAR”), and it will include 74 parking spaces. The project will also have 50% of its inclusionary zoning (“IZ”) units affordable at the 50% AMI level and will be certified LEED-Gold.

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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