

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council schedules a public oversight hearing on “Improving School Attendance: Truancy, Chronic Absenteeism, and the Implementation of Reform Initiatives”
- D.C. Council schedules a public oversight roundtable on the “State of Fields and Playgrounds Maintained by the District”
- Office of the Chief Financial Officer announces an increase in the Tax Year 2018 Schedule H Maximum Credit and Income Thresholds
- Department of Energy and Environment schedules a public hearing on the maintenance plan for the ground-level ozone 2008 National Ambient Air Quality Standards
- Department of Health Care Finance and Department on Disability Services propose revisions to the Statewide Transition Plan for the District Medicaid program’s Home and Community-Based Services Waivers
- Office of the State Superintendent of Education modifies the District of Columbia’s child care subsidy rates, sliding fee schedule, and eligibility requirements
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2018 Farm Field Trip Grant and the Opportunity and Results Act Non-Profit Third-Party Teacher Pipeline Organization Grant

# DISTRICT OF COLUMBIA REGISTER

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

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## DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MAYOR

VICTOR L. REID, ESQ.  
ADMINISTRATOR

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. LAWS

L22-19 Commission on the Arts and Humanities  
Temporary Amendment Act of 2017 ..... 009463

L22-20 Southwest Waterfront Exemption Temporary  
Amendment Act of 2017 ..... 009464

RESOLUTIONS

Res 22-223 Modifications to Contract No. CW28295  
Approval and Payment Authorization  
Emergency Declaration Resolution of 2017 ..... 009465

Res 22-224 Contract No. CW50424 Approval Emergency  
Declaration Resolution of 2017 ..... 009466

Res 22-225 Contract No. CW50424 Emergency Approval  
Resolution of 2017 ..... 009467

Res 22-226 Contract No. DCRL-2017-C-0051 with The  
National Center for Children and Families  
Approval Emergency Declaration Resolution  
of 2017 ..... 009468

Res 22-227 Contract No. DCRL-2017-C-0051 with The  
National Center for Children and Families  
Emergency Approval Resolution of 2017 ..... 009469

Res 22-228 General Obligation Bonds and Bond Anticipation  
Notes for Fiscal Years 2018-2023 Authorization  
Emergency Declaration Resolution of 2017 ..... 009470

Res 22-229 Board of Directors of the Washington  
Metropolitan Area Transit Authority  
Jeff Marootian Appointment Emergency  
Declaration Resolution of 2017 ..... 009471

Res 22-230 Board of Directors of the Washington  
Metropolitan Area Transit Authority  
Jeff Marootian Emergency Appointment  
Resolution of 2017 ..... 009472

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

RESOLUTIONS CONT'D

Res 22-231 Access to Emergency Epinephrine in Schools Clarification Emergency Declaration Resolution of 2017.....009473 - 009474

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Notice of Intent to Act on New Legislation -

Bills B22-436 through B22-466 and Proposed Resolutions PR22-436 and PR22-448 through PR22-454.....009475 - 009480

COUNCIL HEARINGS

Notice of Public Hearings -

B22-68 Deferred Compensation Program Enrollment Act of 2017.....009481 - 009482

B22-128 Jobs for District of Columbia Public School and Public Charter School Graduates Amendment Act of 2017 .....009481 - 009482

B22-212 District Government Employee Residency Amendment Act of 2017 .....009481 - 009482

B22-147 Africare Real Property Tax Relief Act of 2017..... 009483

B22-368 Washington Parks & People Equitable Real Property Tax Relief Act of 2017 ..... 009483

B22-378 Mixed Use Neighborhood Conversion Incentive Act of 2017 ..... 009483

B22-428 General Obligation Bonds and Bond Anticipation Notes for Fiscal Year 2018-2023 Authorization Act of 2017..... 009483

B22-0408 Fare Evasion Decriminalization Act of 2017 .....009484 - 009485

B22-0452 Clemency Board Establishment Act of 2017 .....009484 - 009485

B22-0451 Youth Rehabilitation Amendment Act of 2017.....009486 - 009487

Notice of Public Oversight Hearing -

Improving School Attendance: Truancy, Chronic Absenteeism, and the Implementation of Reform Initiatives .....009488 - 009489

Notice of Public Oversight Roundtable -

The State of Fields and Playgrounds Maintained by the District..... 009490

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

OTHER COUNCIL ACTIONS

Notice of Reprogramming Request -

22-79	Request to reprogram \$323,000 of Fiscal Year 2017 Local funds budget authority within the Department of Energy and Environment (DOEE) .....	009491
-------	--	--------

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

10 Tavern & Grill - ANC 2C - Substantial Change .....	009492
Class B Renewals for September 29, 2017 .....	009493 - 009524
Georgia Ave Oohh's & Aahh's Restaurant - ANC 4B - New.....	009525
InterContinental Washington, D.C. - The Wharf - ANC 6D - Change of Hours - RESCIND .....	009526
Ping Pong Dim Sum - ANC 2C - Substantial Change .....	009527
Target Store T-2259 - ANC 1A - Change of Hours .....	009528
Trader Joe's #620 - ANC 3B - New.....	009529

Energy and Environment, Department of -

Notice of Public Hearing and Comment Period - Redesignation Request & Maintenance Plan for 2008 Ozone NAAQS.....	009530
--	--------

Historic Preservation Review Board -

Pending Historic Landmark and Historic District Nominations - Tentative Public Hearing Schedule .....	009531 - 009533
--	-----------------

Zoning Adjustment, Board of - November 15, 2017 - Public Hearings

19618	Gillette Wing - ANC 6C.....	009534 - 009537
19621	Richard Hilton - ANC 2D .....	009534 - 009537
19622	Mark Rivetti - ANC 6C.....	009534 - 009537
19624	Kerameddine Dris - ANC 5E .....	009534 - 009537
19633	VI 3629 T Street, LLC - ANC 2E .....	009534 - 009537
19634	Jonathan and Kate Grabill - ANC 6B.....	009534 - 009537

Zoning Commission - Case

16-23	Valor Development, LLC (Rescheduled).....	009538 - 009541
-------	---	-----------------

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**FINAL RULEMAKING**

Education, Office of the State Superintendent of -  
 Amend 5 DCMR (Education),  
 Subtitle A (Office of the State Superintendent of Education),  
 Ch. 2 (Child Development Facilities: District-Subsidized  
 Child Care Services), to add Sec. 200 (General Provisions),  
 Sec. 201 (Eligibility Determinations),  
 Sec. 202 (Termination of Subsidized Child Care Services), and  
 Sec. 205 (Appeal of Adverse Action), and update  
 Sections 203, 204, and 299, to modify the District of  
 Columbia’s child care subsidy rates, sliding fee schedule,  
 and eligibility requirements.....009542 - 009566

Health Care Finance, Department of - Amend 29 DCMR  
 (Public Welfare), to add Ch. 101 (Services My Way Program),  
 Sections 10100 - 10113, and Sec. 10199 (Definitions),  
 to set policies and procedures for the District of Columbia  
 Medicaid participant-directed Services My Way Program.....009567 - 009593

Health, Department of - Amend 17 DCMR (Business,  
 Occupations, and Professionals), Ch. 93 (Home Health Aides),  
 to update Sections 9300, 9301, 9304 - 9309, 9313, 9315,  
 9317, 9320, 9321, 9324, 9325, 9327, 9328, 9330 - 9332,  
 and Sec. 9399 (Definitions), and repeal Sec. 9310 and Sec. 931,  
 to make the language in Chapter 93 congruent with the language  
 in Chapters 94 - 97 and to delineate the tasks that can be  
 performed by “personal care aides” .....009594 - 009612

Water and Sewer Authority, DC - Amend 21 DCMR  
 (Water and Sanitation), Ch. 1 (Water Supply),  
 Sec. 112 (Fees), and Ch. 41 (Retail Water and Sewer Rates),  
 to rename Sec. 4104 (Customer Classifications for Water and  
 Sewer Rates) to Sec. 4104 (Customer Classifications for Water  
 and Sewer Rates, Fees and Charges) and update Sec. 4199 (Definitions),  
 to revise the Water System Replacement Fee (WSRF) and the  
 customer classifications and establish rules and procedures  
 for a Multi-Family WSRF adjustment .....009613 - 009616

**PROPOSED RULEMAKING**

Consumer and Regulatory Affairs, Department of (DCRA) -  
 Amend 9 DCMR (Taxation and Assessments),  
 to add Ch. 21 (Vacant Property Exemption Applications),  
 Sec. 2100 (Vacant Property Exemption Applications),  
 to clarify the process for applying for a vacant  
 property exemption from DCRA ..... 009617

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**PROPOSED RULEMAKING CONT'D**

Health, Department of - Amend 17 DCMR  
 (Business, Occupations, and Professionals),  
 to add Ch. 100 (Collaborative Practice Agreements  
 Between Physicians and Pharmacists),  
 Sections 10000 - 10009, Sec. 10099 (Definitions),  
 to implement the provisions of the Collaborative  
 Care Expansion Amendment Act of 2012;  
 Second Proposed Rulemaking to incorporate  
 review changes from previous rulemaking  
 published on October 9, 2015 at 62 DCR 13295 .....009618 - 009635

Motor Vehicles, Department of - Amend 18 DCMR  
 (Vehicles and Traffic), Ch. 1 (Issuance of Driver Licenses),  
 Sec. 106 (Special Physical Requirements and Examinations:  
 Persons with Diabetes, Seizure Disorders, Alteration  
 or Loss of Consciousness, and Hearing Impairment), and  
 Sec. 111 (Re-Examination Requirements), to allow licensed  
 medical practitioners to certify individuals age seventy (70)  
 and over, who are physically and mentally competent to  
 operate a motor vehicle .....009636 - 009637

Public Service Commission - RM13-2017-01 and RM27-2017-02  
 to Amend 15 DCMR (Public Utilities and Cable Television),  
 Ch. 13 (Rules Implementing the Public Utilities Reimbursement  
 Fee Act of 1980), and  
 Ch. 27 (Regulation of Telecommunications Service Providers),  
 to change the deadline for mailing out and filing the annual  
 surveys and require telecommunications service providers  
 to report jurisdictional revenue .....009638 - 009639

**EMERGENCY AND PROPOSED RULEMAKING**

Consumer and Regulatory Affairs, Department of - Amend  
 12 DCMR (Construction Codes Supplement of 2013),  
 Subtitle A (Building Code Supplement of 2013),  
 Ch. 1 (Administration and Enforcement),  
 Ch. 14 (Exterior Walls), Ch. 26 (Plastic), and  
 Ch. 35 (Referenced Standards), to update the  
 D.C. Building Code provisions for exterior  
 walls and permits.....009640 - 009646

Health Care Finance, Department of - Amend 29 DCMR  
 (Public Welfare), Ch. 9 (Medicaid Program),  
 Sec. 903 (Outpatient and Emergency Room Services),  
 to extend the provision of supplemental payments to  
 eligible hospitals that participate in the District  
 Medicaid program for outpatient hospital services  
 through September 30, 2018 .....009647 - 009648

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY AND PROPOSED RULEMAKING CONT'D

Health Care Finance, Department of - Amend 29 DCMR (Public Welfare), Ch. 9 (Medicaid Program), to add Sec. 947 (Private Duty Nursing Services) and update Sec. 999 (Definitions), to establish reimbursement standards for Private Duty Nursing services under the State Plan; Second Proposed Rulemaking to incorporate changes from previous rulemaking published on July 15, 2016 at 63 DCR 009539.....009649 - 009659

Health Care Finance, Department of - Amend 29 DCMR (Public Welfare), to repeal Ch. 51 (Medicaid Reimbursement for Services Provided by Home Health Aides), and add Ch. 99 (Home Health Services), Sections 9900 - 9906 and Sec. 9999 (Definitions), to establish standards for Medicaid reimbursement of Home Health services that correlate to a proposed State Plan Amendment (SPA); Second Emergency and Proposed Rulemaking to incorporate review changes from previous rulemaking published on February 17, 2017 at 64 DCR 001872.....009660 - 009687

NOTICES, OPINIONS, AND ORDERS

MAYOR'S ORDERS

- 2017-220 Reappointments – Committee on Metabolic Disorders (Nicholas Ah Mew, Mark Engman, and Inez Reeves)..... 009688
2017-221 Appointments – Board of Barber and Cosmetology (Isaac Colon and Antonia Browning Smiley) ..... 009689
2017-222 Reappointments – Board of Dentistry (Yolanda Josey-Baker, Iris Morton, and John Bailey) ..... 009690 - 009691
2017-223 Appointments – Board of Dietetics and Nutrition (Annina Burns, Kimberly Thompson, and Chesley Richardson) ..... 009692 - 009693
2017-224 Reappointments and Appointments – Board of Funeral Directors (Ernest Boykin, Randolph Horton, John McGuire, and Duane Hills) ..... 009694 - 009695
2017-225 Appointments – Board of Long-Term Care Administration (Toya Carmichael and Keysha Dale) ..... 009696



ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D  
BOARDS, COMMISSIONS, AND AGENCIES

Administrative Hearings, Office of -  
 Commission on Selection and Tenure of Administrative Law Judges -  
 Notice of Public Meeting - September 29, 2017 .....009697 - 009698

Alcoholic Beverage Regulation Administration -  
 ABC Board's Calendar - October 4, 2017 .....009699 - 009700  
 ABC Board's Cancellation Agenda - October 4, 2017 ..... 009701  
 ABC Board's Investigative Agenda - October 4, 2017 .....009702 - 009703  
 ABC Board's Licensing Agenda - October 4, 2017 .....009704 - 009705

Center City Public Charter Schools -  
 Request for Proposals - Global Ambassadors Travel Planning..... 009706

Chief Financial Officer, Office of the -  
 Notice of Increases in the Tax Year 2018 –  
 Schedule H Maximum Credit and Income  
 Thresholds .....009707 - 009708

Notice of Statutory and Special Real Property  
 Tax Rates for Tax Year 2018 ..... 009709

Child and Family Services Agency -  
 Mayor's Advisory Committee on Child Abuse  
 and Neglect - 2018 Monthly Meeting Schedule..... 009710

D.C. Bilingual Public Charter School -  
 Request for Proposals - Special Education  
 Services - Occupational Therapist..... 009711

Education, Office of the State Superintendent of -  
 Notice of Funding Availability -  
 Fiscal Year 2018 - Farm Field Trip Grant (FFT) ..... 009712

Fiscal Year 2018 - Scholarships for Opportunity  
 and Results (SOAR) Act Non-Profit Third-Party  
 Teacher Pipeline Organization Grants.....009713 - 009714

Elections, Board of -  
 Certification of ANC/SMD Vacancy in 3F06..... 009715

Certification of Filling ANC/SMD Vacancies -  
 6A04 Amber Gove ..... 009716  
 6E04 David Jaffe ..... 009717

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**NOTICES, OPINIONS, AND ORDERS CONT'D  
BOARDS, COMMISSIONS, AND AGENCIES CONT'D**

Health Care Finance, Department of / Disability Services, Department on -  
Public Notice of Revisions to the Statewide  
Transition Plan for the District Medicaid  
Program's Home and Community-Based  
Services Waivers .....009718 - 009719

Health, Department of -  
Board of Medicine - Notice of Meeting -  
September 27, 2017..... 009720

Board of Respiratory Care - Notice of  
Rescheduled Meeting - October 10, 2017 ..... 009721

Judicial Disabilities and Tenure, Commission on -  
Judicial Tenure Commission Begins Reviews  
of Superior Court Judges Russell F. Canan,  
Cheryl M. Long, Joan Zeldon, and Court of  
Appeals Judge Frank Q. Nebeker.....009722 - 009723

Kingsman Academy Public Charter School -  
Request for Proposals - Security Services..... 009724

Not-For-Profit Hospital Corporation -  
Board of Directors Public Meeting - September 29, 2017 .....009725 - 009726

Roots Public Charter School -  
Invitation for Bid - After School/Extended  
Hours Academic Enrichment Program ..... 009727

Secretary, Office of the -  
Recommendations for Appointment as DC Notaries  
Public - Effective October 1, 2017 ..... 009728 - 009734

Recommendations for Appointment as DC Notaries  
Public - Effective November 1, 2017 ..... 009735 - 009745

Water and Sewer Authority, DC -  
Board of Directors Meeting - October 5, 2017 ..... 009746

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**NOTICES, OPINIONS, AND ORDERS CONT'D  
BOARDS, COMMISSIONS, AND AGENCIES CONT'D**

Zoning Adjustment, Board of - Cases -

19047-A	Motion for Reconsideration and Rehearing in the Appeal of Michael Cushman (Appeal No. 19047) - Order .....	009747 - 009749
19081	ANC 1C - Order (Appeal).....	009750 - 009755
19545	Christian Walker - ANC 1B - Order .....	009756 - 009758
19546	Oluseyi Ademiluyi - ANC 1B - Order .....	009759 - 009761
19551	Jared and Lorilee Binstock - ANC 6B - Order.....	009762 - 009764
19552	Alden Whittaker - ANC 6C - Order.....	009765 - 009767

Zoning Commission - Case -

07-13G	Low Enterprises - Notice of Filing.....	009768
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## COUNCIL OF THE DISTRICT OF COLUMBIA

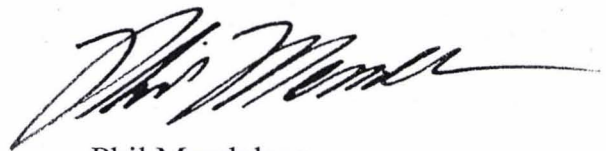
## NOTICE

## D.C. LAW 22-19

**"Commission on the Arts and Humanities Temporary  
Amendment Act of 2017"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-343 on first and second readings June 27, 2017, and July 11, 2017, respectively. Following the signature of the Mayor on July 28, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-123 and was published in the August 4, 2017 edition of the D.C. Register (Vol. 64, page 7422). Act 22-123 was transmitted to Congress on August 8, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-123 is now D.C. Law 22-19, effective September 20, 2017.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

August 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

September 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-20

"Southwest Waterfront Exemption Temporary Amendment Act of 2017"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-363 on first and second readings June 27, 2017, and July 11, 2017, respectively. Following the signature of the Mayor on July 28, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-124 and was published in the August 4, 2017 edition of the D.C. Register (Vol. 64, page 7424). Act 22-124 was transmitted to Congress on August 8, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-124 is now D.C. Law 22-20, effective September 20, 2017.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

August 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

September 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19

## ENROLLED ORIGINAL

## A RESOLUTION

22-223

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To declare the existence of an emergency with respect to the need to approve Modification No. 7 and proposed Modification No. 8 to Contract No. CW28295 with Maru Solutions, Incorporated, to provide Mission Oriented Business Integrated Services, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modifications to Contract No. CW28295 Approval and Payment Authorization Emergency Declaration Resolution of 2017”.

Sec. 2. (a) There exists a need to approve Modification No. 7 and proposed Modification No. 8 to Contract No. CW28295 with Maru Solutions, Incorporated, to provide Mission Oriented Business Integrated Services (“MOBIS”), and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under the modifications.

(b) By Modification No. 7, the Office of Contracting and Procurement (“OCP”) exercised option year 3 of Contract No. CW28295 to provide MOBIS for the period from June 12, 2017, to June 11, 2018, in the not-to-exceed amount of \$950,000.

(c) By Modification No. 8, OCP is proposing to increase the not-to-exceed amount for option years 3 and 4 to \$10 million.

(d) Council approval is necessary because these modifications increase the contract amount to more than \$1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Maru Solutions, Incorporated, cannot be paid for services provided and to be provided in excess of \$1 million for the contract period June 12, 2017, through June 11, 2018.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. CW28295 Approval and Payment Authorization Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-224

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. CW50424 with Acme Auto Leasing, LLC for the leasing of light and medium vehicles to District agencies.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW50424 Approval Emergency Declaration Resolution of 2017".

Sec. 2. (a) The Office of Contracting and Procurement, on behalf of the Department of Public Works, proposes to enter into multiyear Contract No. CW50424 with Acme Auto Leasing, LLC to provide all services and equipment necessary to perform and administer required leases of light and medium vehicles for District agencies.

(b) The contract price under this multiyear contract with Acme Auto Leasing, LLC is in the not-to-exceed amount of \$6,800,450.

(c) Approval is necessary to allow the District to receive the benefit of these vital services in a timely manner from Acme Auto Leasing, LLC.

(d) These critical services can only be obtained through an award of the multiyear contract to Acme Auto Leasing, LLC.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CW50424 Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-225

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To approve, on an emergency basis, multiyear Contract No. CW50424 with Acme Auto Leasing, LLC for the leasing of light and medium vehicles to District agencies.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. CW50424 Emergency Approval Resolution of 2017”.

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), the Council approves multiyear Contract No. CW50424 with Acme Auto Leasing, LLC for the leasing of light and medium vehicles to District agencies in the not-to-exceed amount of \$6,800,450.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.



## ENROLLED ORIGINAL

## A RESOLUTION

22-226

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCRL-2017-C-0051 with The National Center for Children and Families to provide temporary safe haven services to the Child and Family Services Agency.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. DCRL-2017-C-0051 with The National Center for Children and Families Approval Emergency Declaration Resolution of 2017”.

Sec. 2. (a) The Child and Family Services Agency proposes to enter into multiyear Contract No. DCRL-2017-C-0051 with The National Center for Children and Families to provide temporary safe haven services consisting of foster care placement and case management services for approximately 400 children and youth.

(b) The not-to-exceed price for the term of this multiyear contract with The National Center for Children and Families is \$70,665,284. The term will be for 3 years from the date of award.

(c) Council approval is necessary because the term of the contract is more than one year. Council approval is also necessary to allow the District to continue to receive the benefit of these vital services from The National Center for Children and Families without interruption.

(d) These critical services can only be obtained through an award of the multiyear contract with The National Center for Children and Families.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCRL-2017-C-0051 with The National Center for Children and Families Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-227

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To approve, on an emergency basis, multiyear Contract No. DCRL-2017-C-0051 with The National Center for Children and Families to provide temporary safe haven services to the Child and Family Services Agency.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. DCRL-2017-C-0051 with The National Center for Children and Families Emergency Approval Resolution of 2017”.

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves multiyear Contract No. DCRL-2017-C-0051 between the Child and Family Services Agency and The National Center for Children and Families to provide temporary safe haven services consisting of foster care placement and case management services in the not-to-exceed amount of \$70,665,284 for a period of 3 years from the date of award.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-228

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To declare the existence of an emergency with respect to the need to approve the borrowing of funds by the District through the issuance and sale of general obligation bonds.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2018-2023 Authorization Emergency Declaration Resolution of 2017”.

Sec. 2. Emergency legislation is necessary to ensure that the District can borrow in a timely manner and take advantage of favorable market conditions to provide funding for or to reimburse the District for funds already expended on Fiscal Year 2018 capital projects approved and undertaken pursuant to the District’s Fiscal Year 2018 Budget and Financial Plan.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2018-2023 Authorization Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-229

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To declare the existence of an emergency with respect to the need to appoint Mr. Jeff Marootian as an alternate member of the Board of Directors of the Washington Metropolitan Area Transit Authority.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Directors of the Washington Metropolitan Area Transit Authority Jeff Marootian Appointment Emergency Declaration Resolution of 2017”.

Sec. 2. (a) The Washington Metropolitan Area Authority (“WMATA”) was established by an act of Congress, approved on November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01)(“congressional act”), as an interstate compact between the District of Columbia, the State of Maryland, and the Commonwealth of Virginia to plan, finance, construct, and operate a mass-transit system for the Washington, D.C. metropolitan area. A Board of Directors consisting of 2 principal members and 2 alternate members from each of the jurisdictions governs WMATA. The congressional act and the interstate compact designate the Council as the appointing authority for the 4 District members.

(b) Mr. Jeff Marootian will be appointed as an alternate member to the WMATA Board of Directors, replacing Leif Dormsjo, for the remainder of a term that expires on June 30, 2018.

(c) There is an immediate need to confirm Mr. Marootian so that the District has both its alternate members, in addition to both its principal members, on the WMATA Board of Directors as soon as possible to ensure the District is fully represented regarding a number of critical safety, financial, operational, and personnel issues currently under consideration.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Board of Directors of the Washington Metropolitan Area Transit Authority Jeff Marootian Emergency Appointment Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-230

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To appoint, on an emergency basis, Mr. Jeff Marootian to the Board of Directors of the Washington Metropolitan Area Transit Authority.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Directors of the Washington Metropolitan Area Transit Authority Jeff Marootian Emergency Appointment Resolution of 2017”.

Sec. 2. The Council of the District of Columbia appoints:

Mr. Jeff Marootian  
1623 6<sup>th</sup> Street, N.W.  
Washington, D.C. 20001  
(Ward 6)

as an alternate member of the Board of Directors of the Washington Metropolitan Area Transit Authority, in accordance with the Washington Metropolitan Area Transit Authority Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01), and the Washington Metropolitan Area Transit Authority Board of Directors Act, effective April 27, 2013 (D.C. Law 19-286; D.C. Official Code § 9-1108.11), replacing Leif Dormsjo, for the remainder of an unexpired term to end June 30, 2018.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee, the Washington Metropolitan Area Transit Authority, and the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-231

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 19, 2017

To declare the existence of an emergency with the respect to the need amend the Student Access to Treatment Act of 2007 to authorize employees and agents of public schools certified under the Office of the State Superintendent of Education's epinephrine administration training program to administer a designated epinephrine auto-injector to a student to whom it is prescribed.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Access to Emergency Epinephrine in Schools Clarification Emergency Declaration Resolution of 2017".

Sec. 2. (a) In 2015, the Council passed the Access to Emergency Epinephrine in Schools Amendment Act of 2015 ("Access to Emergency Epinephrine in Schools Act"), effective March 9, 2016 (D.C. Law 21-77; D.C. Official Code § 38-651.04a *et seq.*), in order to increase access to epinephrine for students in schools.

(b) Epinephrine, a self-injectable medication, is a first-line treatment for anaphylaxis reactions. Without immediate treatment, anaphylaxis can worsen quickly and lead to severe injury or death within 15 minutes. This window is often not enough time for emergency response units to arrive and administer this medication. For this reason, the legislation authorized public schools to possess undesignated epinephrine injectors and directed the Office of the State Superintendent of Education ("OSSE") to develop and implement a standalone epinephrine administration training program for employees and agents of a school. Undesignated epinephrine injectors are obtained without a prescription for a particular person.

(c) Prior to the passage of the Access to Emergency Epinephrine in Schools Act, the only way an employee or agent of school could legally administer epinephrine to a person suffering an episode of anaphylaxis was through completing the Department of Health's Administration of Medicine ("AOM") training program for school-based personnel. AOM is comprehensive in nature and requires staff to take 3½ days off of work to complete. The length of the AOM training program limits the number of staff that can be trained in epinephrine administration. The Council's goal was to increase access in this regard.

(d) OSSE has created an online training module on the administration of epinephrine that can be completed by staff in a matter of minutes. Similar standalone trainings are offered in other jurisdictions that require a school to stock epinephrine, including neighboring Maryland and Virginia.

## ENROLLED ORIGINAL

(e) On September 9, 2016, OSSE released draft regulations to implement Access to Emergency Epinephrine in Schools and after reviewing it has come to the Council's attention that the law still has a barrier to increasing access to epinephrine.

(f) The Access to Emergency Epinephrine in Schools law states that an employee or agent of a school who is certified through OSSE may administer an undesignated epinephrine auto-injector to a student who the employee or agent believes in good faith to be suffering or about to suffer an anaphylactic episode. Although there is no difference in training necessary for administering a designated versus undesignated epinephrine auto-injector, the law is being interpreted to mean that employees or agents of a school certified through OSSE's training program can only administer undesignated epinephrine injectors. Thus, if a student with a known allergy is suffering an anaphylactic episode and has their own designated epinephrine auto-injector stored at the school, only school-based staff that has completed the Department of Health's AOM training would legally be able to administer the life-saving medication.

(g) The Council's intent in passing the Access to Emergency Epinephrine in Schools legislation was to increase access to emergency epinephrine in schools in a number of ways, including increasing the number of school-based employees who are trained in administering the medication.

(h) On October 11, 2016, the Council passed the Access to Emergency Epinephrine in Schools Clarification Emergency Amendment Act of 2016, effective October 31, 2016 (D.C. Act 21-527; 63 DCR 13609) ("2016 emergency act"), to amend existing law to ensure that an employee or agent of a school who is certified through OSSE's administration of epinephrine training can legally administer both designated and undesignated epinephrine auto-injectors to a student who the employee or agent believes, in good faith, to be suffering or about to suffer an anaphylactic episode. The 2016 emergency act expired on January 29, 2017.

(i) Temporary legislation, the Access to Emergency Epinephrine in Schools Clarification Temporary Amendment Act of 2016, effective March 17, 2017 (D.C. Law 21-183; 63 DCR 2692), was signed by the Mayor on November 18, 2016. It is set to expire October 1, 2017.

(j) Therefore, there is an immediate need to amend existing law to ensure that an employee or agent of a public school that is certified through OSSE's administration of epinephrine training can legally administer both designated and undesignated epinephrine auto-injectors to a student who the employee or agent believes, in good faith, to be suffering or about to suffer an anaphylactic episode.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Access to Emergency Epinephrine in Schools Clarification Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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

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

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

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

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|---------|--|
| B22-436 | Jackson School Disposition and Lease Approval Act of 2017<br><br>Intro. 9-18-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development                         |
| <hr/>   |  |
| B22-437 | Solar Ready Roofs and Sustainable Development Amendment Act of 2017<br><br>Intro. 9-19-17 by Councilmember Cheh and referred to the Committee on Transportation and the Environment  |
| <hr/>   |  |
| B22-438 | Discounted Rent Clarification Amendment Act of 2017<br><br>Intro. 9-19-17 by Councilmembers Cheh and Bonds and referred to the Committee on Housing and Neighborhood Revitalization  |
| <hr/>   |  |
| B22-439 | Quick Payment Amendment Act of 2017<br><br>Intro. 9-19-17 by Councilmembers McDuffie, Todd, Nadeau, Bonds, and R. White and referred to the Committee of the Whole with comments from the Committee on Government Operations |
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- B22-440      Government Contractor-Subcontractor Dispute Resolution Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers McDuffie, Todd, Nadeau, Bonds, and R. White and referred to the Committee of the Whole
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- B22-441      Rental Unit Fee Adjustment Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Bonds, T. White, and Grosso and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-442      Rental Housing Registration Update Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Bonds, T. White, and Cheh and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-443      Child Water Safety Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Bonds, Cheh, and Todd and referred to the Committee on Education
- 
- B22-444      Public Housing Resident Bill of Rights Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Bonds, R. White, Silverman, and T. White and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-445      Safe Access for Public Health Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Grosso and Gray and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Health
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- B22-446      Medical Marijuana Improvement Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Grosso, Nadeau, Gray, and R. White and referred sequentially to the Committee on Health and the Committee on Judiciary and Public Safety
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- B22-447      Record Sealing Modernization Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Grosso, McDuffie, Bonds, and T. White and referred to the Committee on Judiciary and Public Safety
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- B22-448 Senior Tenants and Residents with Disabilities Rental Assistance Program Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Silverman, T. White, R. White, Nadeau, Todd, Grosso, and Bonds and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-449 Small Business Advisory Council Act of 2017  
Intro. 9-19-17 by Councilmembers Silverman, Todd, R. White, Nadeau, Allen, Cheh, and Evans and referred to the Committee on Business and Economic Development
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- B22-450 Grants Transparency Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Silverman, Evans, McDuffie, Nadeau, Allen, and Cheh and referred to the Committee on Finance and Revenue
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- B22-451 Youth Rehabilitation Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Allen, Cheh, Gray, McDuffie, Todd, T. White, Bonds, Evans, Grosso, Nadeau, R. White, and Chairman Mendelson and referred to the Committee on Judiciary and Public Safety
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- B22-452 Clemency Board Establishment Act of 2017  
Intro. 9-19-17 by Councilmembers Allen, Evans, McDuffie, Bonds, Grosso, R. White, and Chairman Mendelson and referred to the Committee on Judiciary and Public Safety
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- B22-453 Nonprofit Stormwater Infrastructure Incentive Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Allen, Evans, and Cheh and referred to the Committee on Finance and Revenue with comments from the Committee on Transportation and the Environment
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- B22-454 Farmer's Market Meter Fee Cap Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Todd, Gray, Nadeau, Cheh, R. White, and Evans and referred to the Committee on Transportation and the Environment with comments from the Committee of the Whole
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- B22-455      Back-to-School Sales Tax Holiday Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Todd, Cheh, T. White, R. White, Gray, Bonds, Grosso, and Nadeau and referred to the Committee on Finance and Revenue
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- B22-456      Universal Free Lunch for All Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Todd, Silverman, T. White, R. White, Gray, Nadeau, and Allen and referred to the Committee on Education
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- B22-457      Economic Development Return on Investment Accountability Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers R. White, Silverman, Todd, Cheh, Bonds, Allen, and T. White and referred sequentially to the Committee on Finance and Revenue and the Committee of the Whole with comments from the Committee on Business and Economic Development
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- B22-458      Opioid Overdose Prevention Act of 2017  
Intro. 9-19-17 by Councilmembers Gray, Cheh, Evans, Allen, Grosso, R. White, Bonds, and Chairman Mendelson and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Health
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- B22-459      Opioid Abuse Treatment Act of 2017  
Intro. 9-19-17 by Councilmembers Gray, Cheh, Bonds, T. White, Grosso, R. White, McDuffie, Evans, and Chairman Mendelson and referred sequentially to the Committee on Judiciary and Public Safety and Committee on Health
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- B22-460      The Department of Health Smoking Cessation Fund Amendment Act of 2017  
Intro. 9-19-17 by Councilmembers Gray, Evans, Cheh, Allen, and Todd and referred to the Committee on Finance and Revenue
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- B22-461      Eviction Prevention Act of 2017  
Intro. 9-19-17 by Councilmembers T. White, Bonds, R. White, Silverman, Cheh, and McDuffie and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-462 Office of Housing Stability Act of 2017  
Intro. 9-19-17 by Councilmembers T. White, Todd, and Bonds and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-463 Rolark Place and Calvin and Wilhelmina Rolark Way Designation Act of 2017  
Intro. 9-19-17 by Chairman Mendelson and Councilmembers McDuffie, T. White, and R. White and referred to the Committee of the Whole
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- B22-464 Washington Metrorail Safety Commission Board of Directors Appointment Amendment Act of 2017  
Intro. 9-19-17 by Chairman Mendelson and Councilmember Evans and referred sequentially to the Committee on Finance and Revenue and the Committee of the Whole
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- B22-465 Foreign Government Owned Vacant and Blighted Building Amendment Act of 2017  
Intro. 9-19-17 by Chairman Mendelson and Councilmembers Evans and Cheh and referred to the Committee of the Whole
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- B22-466 Fiscal Year 2018 Budget Support Clarification Amendment Act of 2017  
Intro. 9-19-17 by Chairman Mendelson and referred to the Committee of the Whole
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### **PROPOSED RESOLUTIONS**

- PR22-436 Sense of the Council Calling on Congress to remove the Albert Pike Statute Resolution of 2017  
Intro. 9-19-17 by Councilmembers Evans and Cheh and Retained by the Council
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- PR22-448 Sense of the Council in Support of Legislative Action to Protect Dreamers Resolution of 2017  
Intro. 9-19-17 by Councilmembers Cheh, Allen, R. White, Nadeau, Gray, Evans, T. White, Grosso, McDuffie, Silverman, Todd, Bonds, and Chairman Mendelson and referred to the Committee of the Whole
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- PR22-449      Sense of the Council Declaring 2018 the Year of the Anacostia Resolution of 2017
- Intro. 9-19-17 by Councilmembers Allen, Todd, Evans, Nadeau, Silverman, McDuffie, R. White, Cheh, Grosso, Gray, Bonds, T. White, and Chairman Mendelson and referred to the Committee on Transportation and the Environment
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- PR22-450      Board of Marriage and Family Therapy Jennifer Novak Confirmation Resolution of 2017
- Intro. 9-21-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
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- PR22-451      Board of Marriage and Family Therapy Sylvia Rosario Confirmation Resolution of 2017
- Intro. 9-21-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
- 
- PR22-452      Board of Professional Engineering Roland Carter Confirmation Resolution of 2017
- Intro. 9-21-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
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- PR22-453      Board of Respiratory Care Carolyn A. Williams Confirmation Resolution of 2017
- Intro. 9-21-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
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- PR22-454      Office of Disability Rights Mathew McCollough Confirmation Resolution of 2017
- Intro. 9-21-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Human Services
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COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT  
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

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**CHAIRPERSON ELISSA SILVERMAN  
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT**

**ANNOUNCES A PUBLIC HEARING ON**

**B22-68, “DEFERRED COMPENSATION PROGRAM ENROLLMENT ACT OF 2017”**

**B22-128, “JOBS FOR DISTRICT OF COLUMBIA PUBLIC SCHOOL AND PUBLIC  
CHARTER SCHOOL GRADUATES AMENDMENT ACT OF 2017”**

**B22-212, “DISTRICT GOVERNMENT EMPLOYEE RESIDENCY AMENDMENT ACT OF  
2017”**

**Monday, October 16, 2017, 10:00 a.m.  
Hearing Room 123, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Councilmember Elissa Silverman, Chair of the Committee on Labor and Workforce Development, announces a hearing on B22-68, the “Deferred Compensation Program Enrollment Act of 2017,” B22-128, the “Jobs for District of Columbia Public School and Public Charter School Graduates Amendment Act of 2017,” and B22-212, the “District Government Employee Residency Amendment Act of 2017.” The hearing will be held at 10 a.m. on Monday, October 16, 2017, in Room 123 of the John A. Wilson Building.

The purpose of B22-68, “Deferred Compensation Program Enrollment Act of 2017” is to make automatic enrollments into the District government’s deferred compensation program for newly hired employees of the District government.

The purpose of B22-128, “Jobs for District of Columbia Public School and Public Charter School Graduates Amendment Act of 2017” is to require District government agencies to provide an employment preference to District of Columbia Public School and Public Charter School graduates.

The purpose of B22-212, the “District Government Employee Residency Amendment Act of 2017,” is to establish student loan repayment assistance for newly-hired District government employees who claim the District resident preference, to implement an electronic residency verification process for applicants and appointees, and to authorize the Mayor to non-competitively appoint District residents to positions with a severe shortage of candidates or a critical hiring need, and other purposes.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at [laborworkforcedevelopment@dccouncil.us](mailto:laborworkforcedevelopment@dccouncil.us) or (202) 724-7772 by 5:00 p.m. on Monday, October 16, 2017, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time may be allowed if there are a large number of witnesses.

If a witness is 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 by email to Ms. Royster at [laborworkforcedevelopment@dccouncil.us](mailto:laborworkforcedevelopment@dccouncil.us) or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 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 Monday, October 30, 2017.

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

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

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

**ANNOUNCES A PUBLIC HEARING ON:**

**Bill 22-147, the “Africare Real Property Tax Relief Act of 2017”  
Bill 22-368, the “Washington Parks & People Equitable Real Property Tax Relief Act of 2017”  
Bill 22-378, the “Mixed Use Neighborhood Conversion Incentive Act of 2017”  
Bill 22-428, the “General Obligation Bonds and Bond Anticipation Notes for Fiscal Year 2018-2023  
Authorization Act of 2017”**

**Friday, October 20, 2017**

**10:00 a.m.**

**Room 120 - John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Friday, October 20, 2017 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 22-147, the “Africare Real Property Tax Relief Act of 2017” will amend Chapter 10 of the District of Columbia Official Code to provide real property tax relief for 440 R Street, N.W., 430 R Street, N.W., 428 R Street, N.W., 426 R Street, N.W., and 424 R Street, N.W., owned by Africare.

Bill 22-368, the “Washington Parks and People Equitable Real Property Tax Relief Act of 2017” will amend Chapter 10 of Title 47 of the District of Columbia Official Code to provide equitable real property tax relief to certain property near 11<sup>th</sup> Street and Park Road, NW owned by Washington Parks & People, a non-profit organization.

Bill 22-378, the “Mixed Use Neighborhood Conversion Incentive Act of 2017” will amend Chapter 8 of Title 47 of the District of Columbia Official Code to authorize the Mayor to provide real property tax abatements as incentive for the conversion of office space into residential space in the Golden Triangle and Downtown BID areas.

Bill 22-428, the “General Obligation Bonds and Bond Anticipation Notes for Fiscal Year 2018-2023 Authorization Act of 2017” will authorize the issuance general obligation bonds and general obligation bond anticipation notes of the District of Columbia for the purposes of financing certain capital projects and the refunding of certain capital indebtedness of the District of Columbia during Fiscal Years 2018 through 2023.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or [sloy@dccouncil.us](mailto:sloy@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Thursday, October 19, 2017. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.



**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY  
NOTICE OF PUBLIC HEARING  
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 22-0408, THE “FARE EVASION DECRIMINALIZATION ACT OF 2017”**

**AND**

**BILL 22-0452, THE “CLEMENCY BOARD ESTABLISHMENT ACT OF 2017”**

**Thursday, October 19, 2017, 12:00 p.m.  
Room 123, John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004**

On Thursday, October 19, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0408, the “Fare Evasion Decriminalization Act of 2017”, and Bill 22-0452, the “Clemency Board Establishment Act of 2017”. The hearing will take place in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 12:00 p.m.

The stated purpose of Bill 22-0408, the “Fare Evasion Decriminalization Act of 2017”, is to amend the Act to Regulate Public Conduct on Public Passenger Vehicles to make fare evasion a civil offense punishable by fine instead of a criminal offense that can be punishable via imprisonment.

The stated purpose of Bill 22-0452, the “Clemency Board Establishment Act of 2017”, is to establish a Clemency Board to advance local control over the clemency process by reviewing applications for pardons and commutations for District of Columbia Code offenders.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Friday, October 13**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of

their written testimony and, if possible, also submit a copy of their testimony electronically in advance to [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us).

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on November 2.**

**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY  
NOTICE OF PUBLIC HEARING  
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 22-0451, THE “YOUTH REHABILITATION AMENDMENT ACT OF 2017”**

**Thursday, October 26, 2017, 9:30 a.m.  
Room 500, John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004**

On Thursday, October 26, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0451, the “Youth Rehabilitation Amendment Act of 2017”. The hearing will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m.

The stated purpose of Bill 22-0451, the “Youth Rehabilitation Amendment Act of 1985”, is to amend the Youth Rehabilitation Amendment Act of 1985 to modify the definitions of “treatment” and “youth offender”, require the Mayor to submit a strategic plan to the Council to provide comprehensive treatment and services to youth offenders and youth and young adults at risk of becoming youth offenders, provide a list of factors to guide the court in making the determination of whether a youth offender will be sentenced under the act and have their conviction set aside, enhance transparency for victims and youth offenders by requiring written statements of sentencing and set aside decisions, provide for more predictive evaluations by the court of a youth offender’s potential for rehabilitation under the act by moving the decision of whether a set aside should be granted from sentencing to the completion of the youth offender’s sentence or probation, provide grants to assist victims of crime and committed youth offenders in understanding and navigating the act’s sentencing provisions, require the Criminal Justice Coordinating Council to conduct a biennial analysis of the act, and require the Mayor to issue rules; and to amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to require the Corrections Information Council to submit an annual report on the conditions of confinement and programming provided to committed youth offenders.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title

(if any), by **close of business Friday, October 20**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us).

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on November 9.**

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE & COMMITTEE ON  
EDUCATION**

**NOTICE OF PUBLIC OVERSIGHT HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
&  
COUNCILMEMBER DAVID GROSSO, CHAIRPERSON  
COMMITTEE ON EDUCATION**

**ANNOUNCE A PUBLIC OVERSIGHT HEARING**

on

**Improving School Attendance: Truancy, Chronic Absenteeism, and the Implementation of  
Reform Initiatives**

on

**Monday, October 23, 2017**

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

Council Chairman Phil Mendelson and Councilmember David Grosso announce a public oversight hearing of the Committee of the Whole and the Committee on Education on Improving School Attendance: Truancy, Chronic Absenteeism, and the Implementation of Reform Initiatives in the District. The oversight hearing will be held at noon on Monday, October 23, 2017 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of this oversight hearing is to receive testimony from government witnesses and partners, including the Office of the Deputy Mayor for Education, the Office of the State Superintendent of Education, the Child and Family Services Agency, the District of Columbia Public Schools, the Public Charter School Board, and the Office of Victim Services and Justice Grants, regarding the District's efforts to improve school attendance and to reduce truancy and chronic absenteeism. Additionally, the hearing will consider continued implementation of initiatives required by D.C. Law 18-242, the "Safe Children and Safe Neighborhoods Educational Neglect Mandatory Reporting Amendment Act of 2010," D.C. Law 19-141, the "South Capitol Street Memorial Amendment Act of 2012," D.C. Law 20-17, the "Attendance Accountability Amendment Act of 2013," and D.C. Law 21-140, the "School Attendance Clarification Amendment Act of 2016." Improving school attendance improves educational outcomes. Targeting truancy is also a strategy for identifying children at risk of interacting with the juvenile justice system.

Those who wish to testify are asked to email the Committee of the Whole at [cow@dccouncil.us](mailto:cow@dccouncil.us), or to call Christina Setlow, Deputy Committee Director, at (202) 724-4865, and to provide your name, address, telephone number, organizational affiliation, and title (if any) by close of business Thursday, October 19, 2017. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on October 19, 2017 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. Copies 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 oversight 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 November 6, 2017.

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

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**NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON**

**The State of Fields and Playgrounds Maintained by the District**

October 13, 2017 at 11:00 a.m.  
Room 500 of the John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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On October 13, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public oversight roundtable on the state of fields and playgrounds maintained by the District. The roundtable will begin at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The purpose of this roundtable is to address concerns about the current state of fields and playgrounds in the District. The Committee has received numerous complaints regarding maintenance and upkeep of field and playground spaces at District schools and parks, including reports that materials used in the creation of those fields may be unsafe for use. At the roundtable, the Committee will seek information about the District's field portfolio, field safety standards, the maintenance and replacement protocol for fields and playgrounds, and other information related to the ongoing health and safety of the fields and the residents who use them.

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](mailto:abenjamin@dccouncil.us). Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written testimony and should submit a copy of their testimony electronically to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us).

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or faxed to (202) 724-8118. The record will close at the end of the business day on October 27, 2017

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**Notice of Reprogramming Requests**

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.  
Telephone: 724-8050

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**Reprog. 22-79**

Request to reprogram \$323,000 of Fiscal Year 2017 Local funds budget authority within the Department of Energy and Environment (DOEE) was filed in the Office of the Secretary on September 20, 2017. This reprogramming ensures that DOEE is able to make additional funding available for the Low-Income Home Energy Assistance Program (LIHEAP).

RECEIVED: 14 day review begins September 20, 2017



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: September 29, 2017  
Protest Petition Deadline: November 13, 2017  
Roll Call Hearing Date: November 27, 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 J. O’Brien: (202) 625-7700

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee has requested 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 November 27, 2017 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 seeks to expand its premises into the ground floor. The expansion will create 155 new seats, increasing the seating capacity from 130 to 285. The new Total Occupancy Load of the restaurant will be 325.

**CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR PREMISE**

Sunday through Saturday 10:00 am to 2:00 am

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

Sunday through Thursday 10:00 am to 11:00 pm, Friday and Saturday 10:00 am to 12:00 am

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-107577**

**License Class/Type: B Retail - Grocery**

**Applicant: Youwon Services LLC**

**Trade Name: Young's Deli & Market**

**ANC: 3B04**

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

**4000 MASSACHUSETTS AVE NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9 am - 1 pm	9 am - 1 pm
Monday:	8 am - 7 pm	9 am - 7 pm
Tuesday:	8 am - 7 pm	9 am - 7 pm
Wednesday:	8 am - 7 pm	9 am - 7 pm
Thursday:	8 am - 7 pm	9 am - 7 pm
Friday:	8 am - 7 pm	9 am - 7 pm
Saturday:	8 am - 7 pm	9 am - 7 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-083044

License Class/Type: B Retail - Grocery

Applicant: MNS LLC

Trade Name: McKinley Market

ANC: 5E03

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

321 T ST NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-000394

License Class/Type: B Retail - Grocery

Applicant: Discount Drugs Wisconsin Inc

Trade Name: Rodman's Discount Drugs

ANC: 3E03

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

5100 WISCONSIN AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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 - 7 pm	10 am - 7 pm
Monday:	8 am - 10 pm	8 am - 10 pm
Tuesday:	8 am - 10 pm	8 am - 10 pm
Wednesday:	8 am - 10 pm	8 am - 10 pm
Thursday:	8 am - 10 pm	8 am - 10 pm
Friday:	8 am - 10 pm	8 am - 10 pm
Saturday:	8 am - 10 pm	8 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-001006**

**License Class/Type: B Retail - Grocery**

**Applicant: A Litteri Inc**

**Trade Name: A Litteri Inc**

**ANC: 5D01**

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

**517 MORSE ST NE**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 5 pm	9 am - 5 pm
Monday:	8 am - 5 pm	9 am - 5 pm
Tuesday:	8 am - 5 pm	9 am - 5 pm
Wednesday:	8 am - 5 pm	9 am - 5 pm
Thursday:	8 am - 5 pm	9 am - 5 pm
Friday:	8 am - 5 pm	9 am - 5 pm
Saturday:	8 am - 5 pm	9 am - 5 pm

**ENDORSEMENT(S): Tasting**

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-001751**

**License Class/Type: B Retail - Grocery**

**Applicant: Metro- K Supermarket, Inc.**

**Trade Name: Metro K Supermarket**

**ANC: 1C03**

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

**1864 COLUMBIA RD NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9 am - 10 pm	9 am - 10 pm
Monday:	9 am - 10 pm	9 am - 10 pm
Tuesday:	9 am - 10 pm	9 am - 10 pm
Wednesday:	9 am - 10 pm	9 am - 10 pm
Thursday:	9 am - 10 pm	9 am - 10 pm
Friday:	9 am - 10 pm	9 am - 10 pm
Saturday:	9 am - 10 pm	9 am - 10 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-011247**

**License Class/Type: B Retail - Grocery**

**Applicant: Lydia Assefa**

**Trade Name: Super Saver Grocery & Deli**

**ANC: 4C05**

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

**4413 14TH ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	24 hours -	9 am - 12 am
Monday:	24 hours -	9 am - 12 am
Tuesday:	24 hours -	9 am - 12 am
Wednesday:	24 hours -	9 am - 12 am
Thursday:	24 hours -	9 am - 12 am
Friday:	24 hours -	9 am - 12 am
Saturday:	24 hours -	9 am - 12 am

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-014926**

**License Class/Type: B Retail - Grocery**

**Applicant: Vace Inc**

**Trade Name: Vace Italian Deli**

**ANC: 3C04**

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

**3315 CONNECTICUT AVE NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9 am - 9 pm	9 am - 9 pm
Monday:	9 am - 9 pm	9 am - 9 pm
Tuesday:	9 am - 9 pm	9 am - 9 pm
Wednesday:	9 am - 9 pm	9 am - 9 pm
Thursday:	9 am - 9 pm	9 am - 9 pm
Friday:	9 am - 9 pm	9 am - 9 pm
Saturday:	9 am - 9 pm	9 am - 9 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**



ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-021260

License Class/Type: B Retail - Grocery

Applicant: Solneb, Incorporated

Trade Name: 14th Mini-market

ANC: 4C04

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

3904 14TH ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 12 am	7 am - 12 am
Monday:	7 am - 12 am	7 am - 12 am
Tuesday:	7 am - 12 am	7 am - 12 am
Wednesday:	7 am - 12 am	7 am - 12 am
Thursday:	7 am - 12 am	7 am - 12 am
Friday:	7 am - 12 am	7 am - 12 am
Saturday:	7 am - 12 am	7 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-025169

License Class/Type: B Retail - Grocery

Applicant: Wen De Zhang & Yang You Feng

Trade Name: China House

ANC: 6A07

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

1601 BENNING RD NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-072260**

**License Class/Type: B Retail - Grocery**

**Applicant: Mok Ju Na**

**Trade Name: Daily Fish Of Chesapeake**

**ANC: 1B11**

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

**2250 SHERMAN AVE NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	CLOSED - CLOSED	CLOSED - CLOSED
Monday:	6 am - 6 pm	7 am - 6 pm
Tuesday:	6 am - 6 pm	7 am - 6 pm
Wednesday:	6 am - 6 pm	7 am - 6 pm
Thursday:	6 am - 6 pm	7 am - 6 pm
Friday:	6 am - 6 pm	7 am - 6 pm
Saturday:	6 am - 6 pm	7 am - 6 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-073973**

**License Class/Type: B Retail - Grocery**

**Applicant: Xaing Fong Corporation**

**Trade Name: North Sea Carry-out Restaurant**

**ANC: 1C07**

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

**2479 18TH ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 12 am	11 am - 12 am
Monday:	11 am - 12 am	11 am - 12 am
Tuesday:	11 am - 12 am	11 am - 12 am
Wednesday:	11 am - 12 am	11 am - 12 am
Thursday:	11 am - 12 am	11 am - 12 am
Friday:	11 am - 12 am	11 am - 12 am
Saturday:	11 am - 12 am	11 am - 12 am

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-075184**

**License Class/Type: B Retail - Grocery**

**Applicant: Wisdom Market, Inc.**

**Trade Name: R & M Market**

**ANC: 7D06**

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

**4003 GAULT PL NE**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9 am - 8:30 pm	9 am - 8:30 pm
Monday:	9 am - 8:30 pm	9 am - 8:30 pm
Tuesday:	9 am - 8:30 pm	9 am - 8:30 pm
Wednesday:	9 am - 8:30 pm	9 am - 8:30 pm
Thursday:	9 am - 8:30 pm	9 am - 8:30 pm
Friday:	9 am - 8:30 pm	9 am - 8:30 pm
Saturday:	9 am - 8:30 pm	9 am - 8:30 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-076858**

**License Class/Type: B Retail - Grocery**

**Applicant: Capit-Oh Hill Supreme Corp.**

**Trade Name: Capitol Supreme Market**

**ANC: 6B03**

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

**501 4TH ST SE**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 8 pm	9 am - 8 pm
Monday:	7:30 am - 9:30 pm	9 am - 9:30 pm
Tuesday:	7:30 am - 9:30 pm	9 am - 9:30 pm
Wednesday:	7:30 am - 9:30 pm	9 am - 9:30 pm
Thursday:	7:30 am - 9:30 pm	9 am - 9:30 pm
Friday:	7:30 am - 9:30 pm	9 am - 9:30 pm
Saturday:	7:30 am - 9:30 pm	9 am - 9:30 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-078255**

**License Class/Type: B Retail - Grocery**

**Applicant: Berhanu and Nega, LLC**

**Trade Name: Ogden Market**

**ANC: 1A02**

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

**1500 OGDEN ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 11 pm	8 am - 11 pm
Monday:	8 am - 11 pm	8 am - 11 pm
Tuesday:	8 am - 11 pm	8 am - 11 pm
Wednesday:	8 am - 11 pm	8 am - 11 pm
Thursday:	8 am - 11 pm	8 am - 11 pm
Friday:	8 am - 11 pm	8 am - 11 pm
Saturday:	8 am - 11 pm	8 am - 11 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-082376

License Class/Type: B Retail - Class B

Applicant: Hope Market, Inc

Trade Name: Lena Market

ANC: 4A04

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

1206 UNDERWOOD ST NW

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

11/13/2017

A HEARING WILL BE HELD ON:

11/27/2017

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 12 am	9 am - 12 am
Monday:	9 am - 12 am	9 am - 12 am
Tuesday:	9 am - 12 am	9 am - 12 am
Wednesday:	9 am - 12 am	9 am - 12 am
Thursday:	9 am - 12 am	9 am - 12 am
Friday:	9 am - 12 am	9 am - 12 am
Saturday:	9 am - 12 am	9 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-086230**

**License Class/Type: B Retail - Class B**

**Applicant: HSA Investments, LLC**

**Trade Name: Sara's Market**

**ANC: 2E06**

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

**3008 Q ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 9 pm	9 am - 8:30 pm
Monday:	8 am - 9 pm	9 am - 8:30 pm
Tuesday:	8 am - 9 pm	9 am - 8:30 pm
Wednesday:	8 am - 9 pm	9 am - 8:30 pm
Thursday:	8 am - 9 pm	9 am - 8:30 pm
Friday:	8 am - 9 pm	9 am - 8:30 pm
Saturday:	8 am - 9 pm	9 am - 8:30 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-087999**

**License Class/Type: B Retail - Class B**

**Applicant: BJ & M, Inc.**

**Trade Name: Argonne Market**

**ANC: 1C05**

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

**1629 COLUMBIA RD NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 8 pm	9 am - 8 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:	7 am - 8 pm	9 am - 8 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-090082

License Class/Type: B Retail - Grocery

Applicant: Glen's Garden Market, LLC

Trade Name: Glen's Garden Market

ANC: 2B01

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

2001 S ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-092095**

**License Class/Type: B Retail - Class B**

**Applicant: S & H, Inc,**

**Trade Name: Streets Market & Cafe**

**ANC: 1B05**

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

**2400 14th ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 11 pm	8 am - 11 pm
Monday:	7 am - 11 pm	8 am - 11 pm
Tuesday:	7 am - 11 pm	8 am - 11 pm
Wednesday:	7 am - 11 pm	8 am - 11 pm
Thursday:	7 am - 11 pm	8 am - 11 pm
Friday:	7 am - 11 pm	8 am - 11 pm
Saturday:	7 am - 11 pm	8 am - 11 pm

**ENDORSEMENT(S): Tasting**

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-096107

License Class/Type: B Retail - Grocery

Applicant: 4686 MLK, LLC

Trade Name: Fort Drum Market

ANC: 8D04

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

4686 MARTIN LUTHER KING JR AVE SW

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

11/13/2017

A HEARING WILL BE HELD ON:

11/27/2017

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 11 pm	9 am - 11 pm
Monday:	9 am - 11 pm	9 am - 11 pm
Tuesday:	9 am - 11 pm	9 am - 11 pm
Wednesday:	9 am - 11 pm	9 am - 11 pm
Thursday:	9 am - 11 pm	9 am - 11 pm
Friday:	9 am - 11 pm	9 am - 11 pm
Saturday:	9 am - 11 pm	9 am - 11 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-100252

License Class/Type: B Retail - Class B

Applicant: Glen's Shaw, LLC

Trade Name: Glen's Garden Market Shaw

ANC: 1B02

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

1924 8 ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-101106**

**License Class/Type: B Retail - Class B**

**Applicant: Dubai Market, LLC**

**Trade Name: Dubai Market**

**ANC: 1A04**

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

**3443 14TH ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 12 am	7 am - 12 am
Monday:	7 am - 12 am	7 am - 12 am
Tuesday:	7 am - 12 am	7 am - 12 am
Wednesday:	7 am - 12 am	7 am - 12 am
Thursday:	7 am - 12 am	7 am - 12 am
Friday:	7 am - 12 am	7 am - 12 am
Saturday:	7 am - 12 am	7 am - 12 am

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-104694**

**License Class/Type: B Retail - Grocery**

**Applicant: Union Kitchen, LLC**

**Trade Name: Union Kitchen Grocery**

**ANC: 2F06**

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

**1251 9TH ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8:30 am - 11 pm	8:30 am - 11 pm
Monday:	7:30 am - 10 pm	8:30 am - 10 pm
Tuesday:	7:30 am - 10 pm	8:30 am - 10 pm
Wednesday:	7:30 am - 10 pm	8:30 am - 10 pm
Thursday:	7:30 am - 10 pm	8:30 am - 10 pm
Friday:	7:30 am - 10 pm	8:30 am - 10 pm
Saturday:	8:30 am - 11 pm	8:30 am - 11 pm

**ENDORSEMENT(S): Tasting**

**FOR FURTHER INFORMATION CALL: (202) 442-4423**



ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-105822

License Class/Type: B Retail - Class B

Applicant: Fana, Inc

Trade Name: Mudrick's Supermarket

ANC: 5D07

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

1064 BLADENSBURG RD NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-008809**

**License Class/Type: B Retail - Grocery**

**Applicant: Clinton Price**

**Trade Name: Price's Grocery**

**ANC: 5A07**

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

**5018 ROCK CREEK CHURCH RD NE**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	24 HOURS - 24HOURS	9 am - 12midnight
Monday:	24HOURS - 24HOURS	9 am - 12midnight
Tuesday:	24HOURS - 24HOURS	9 am - 12midnight
Wednesday:	24HOURS - 24HOURS	9 am - 12midnight
Thursday:	24HOURS - 24HOURS	9 am - 12midnight
Friday:	24HOURS - 24HOURS	9 am - 12midnight
Saturday:	24HOURS - 24HOURS	9 am - 12midnight

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-060734

License Class/Type: B Retail - Grocery

Applicant: Cha Corpotaion

Trade Name: Lobby Mart

ANC: 2C03

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

501 3RD ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	6:30am - 10:00pm	7:00am - 10:00pm
Monday:	6:30 am - 10:00pm	7:00am - 10:00pm
Tuesday:	6:30 am - 10:00pm	7:00am - 10:00pm
Wednesday:	6:30 am - 10:00pm	7:00am - 10:00pm
Thursday:	6:30 am - 10:00pm	7:00am - 10:00pm
Friday:	6:30 am - 10:00pm	7:00am - 10:00pm
Saturday:	6:30 am - 10:00pm	7:00am - 10:00pm

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-072611

License Class/Type: B Retail - Grocery

Applicant: Cost Plus Inc.

Trade Name: World Market

ANC: 3E04

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

5335 WISCONSIN AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-084429**

**License Class/Type: B Retail - Grocery**

**Applicant: Hi Suk Corporation**

**Trade Name: Brightwood Supermarket**

**ANC: 4B08**

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

**100 Kennedy ST NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 11 pm	9 am - 10 pm
Monday:	8 am - 11 pm	9 am - 10 pm
Tuesday:	8 am - 11 pm	9 am - 10 pm
Wednesday:	8 am - 11 pm	9 am - 10 pm
Thursday:	8 am - 11 pm	9 am - 10 pm
Friday:	8 am - 11 pm	9 am - 10 pm
Saturday:	8 am - 11 pm	9 am - 10 pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-092449

License Class/Type: B Retail - Grocery

Applicant: Each Peach, LLC

Trade Name: Each Peach Market

ANC: 1D05

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

3068 MOUNT PLEASANT ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-093808**

**License Class/Type: B Retail - Grocery**

**Applicant: BIN & AB LLC**

**Trade Name: Gray's Market**

**ANC: 1A09**

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

**3306 GEORGIA AVE NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 12 am	7 am - 12 am
Monday:	7 am - 12 am	7 am - 12 am
Tuesday:	7 am - 12 am	7 am - 12 am
Wednesday:	7 am - 12 am	7 am - 12 am
Thursday:	7 am - 12 am	7 am - 12 am
Friday:	7 am - 12 am	7 am - 12 am
Saturday:	7 am - 12 am	7 am - 12 am

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION

ON

9/29/2017

Notice is hereby given that:

License Number: ABRA-105123

License Class/Type: B Retail - Grocery

Applicant: S & H 4, Inc.

Trade Name: Streets Market

ANC: 2F08

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

1221 MASSACHUSETTS AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:  
11/13/2017

A HEARING WILL BE HELD ON:  
11/27/2017

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION**

**ADMINISTRATION**

**ON**

**9/29/2017**

**Notice is hereby given that:**

**License Number: ABRA-106263**

**License Class/Type: B Retail - Grocery**

**Applicant: JJ Flagler, Inc**

**Trade Name: Flagler Market**

**ANC: 5E08**

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

**2200 FLAGLER PL NW**

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

**BEFORE:**

**11/13/2017**

**A HEARING WILL BE HELD ON:**

**11/27/2017**

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

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9am - 6pm	9am - 6pm
Monday:	8:30am - 8:30pm	9am - 8:30pm
Tuesday:	8:30am - 8:30pm	9:00am - 8:30pm
Wednesday:	8:30am - 8:30pm	9am - 8:30pm
Thursday:	8:30am - 8:30pm	9am - 8:30pm
Friday:	8:30am - 8:30pm	9am - 8:30pm
Saturday:	8:30am - 8:30pm	9am - 8:30pm

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: September 29, 2017
Protest Petition Deadline: November 13, 2017
Roll Call Hearing Date: November 27, 2017
Protest Hearing Date: January 24, 2018

License No.: ABRA-107879
Licensee: Georgia Ave Oohh's & Aahh's Restaurant, LLC
Trade Name: Georgia Ave Oohh's & Aahh's Restaurant
License Class: Retailer's Class "C" Restaurant
Address: 5933 Georgia Avenue, N.W.
Contact: Karen Abbott: (202) 882-2907

WARD 4 ANC 4B SMD 4B04

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 November 27, 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 January 24, 2018 at 4:30 p.m.

NATURE OF OPERATION

New class "C" restaurant with 86 seats and a Total Occupancy Load of 108. Applicant has also applied for an Entertainment Endorsement.

HOURS OF OPERATION

Sunday through Saturday 8 am - 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

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

HOURS OF LIVE ENTERTAINMENT

Sunday through Saturday 6 pm - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*RESCIND**

Placard Posting Date: September 22, 2017  
Protest Petition Deadline: November 6, 2017  
Roll Call Hearing Date: November 20, 2017

License No.: ABRA-106688  
Licensee: Carr Waterfront Hotel LLC  
Trade Name: InterContinental Washington, D.C. - The Wharf  
License Class: Retailer’s Class “C” Hotel  
Address: 801 Water Street, S.W.  
Contact: Andrew Kline: 202-686-7600

WARD 6

ANC 6D

SMD 6D04

Notice is hereby given that this licensee has requested 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 November 20, 2017 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date

Licensee requests the following substantial change to its nature of operation:

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests to change the hours of Alcoholic Beverage Sales, Service, Consumption, and Entertainment Endorsement.

**CURRENT HOURS OF OPERATION**

Sunday through Saturday 12am - 12am (24 hour operations)

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

Sunday through Saturday 11 am - 12 am

**CURRENT HOURS OF LIVE ENTERTAINMENT**

Sunday through Saturday 6 pm - 12 am

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

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

**PROPOSED 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: September 29, 2017  
Protest Petition Deadline: November 13, 2017  
Roll Call Hearing Date: November 27, 2017

License No.: ABRA-105730  
Licensee: Westchester Hospitality Culinary Group, LLC  
Trade Name: Ping Pong Dim Sum  
License Class: Retailer’s Class “C” Restaurant  
Address: 900 7<sup>th</sup> Street, N.W.  
Contact: Dawit Zeleke: (703) 725-2240

WARD 2                      ANC 2C                      SMD 2C01

Notice is hereby given that this licensee has requested Substantial Changes 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 November 27, 2017 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 CHANGES**

Applicant requests an Entertainment Endorsement to include Dancing and Cover Charge, and a Change of Hours to the ABC License.

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

Sunday through Thursday 11 am – 1 am, Friday and Saturday 11 am – 2 am

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

Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am – 3 am

**PROPOSED 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: September 29, 2017  
Protest Petition Deadline: November 13, 2017  
Roll Call Hearing Date: November 27, 2017

License No.: ABRA-078895  
Licensee: Target Corporation  
Trade Name: Target Store T-2259  
License Class: Retailer’s Class “B” Grocery  
Address: 3100 14<sup>th</sup> Street, N.W.  
Contact: Janine Brown-Wiese: (202) 777-3773

WARD 1

ANC 1A

SMD 1A05

Notice is hereby given that this licensee has requested 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 November 27, 2017 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 a Change of Hours to the current license.

**CURRENT HOURS OF OPERATION**

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

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES**

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

**PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES**

Sunday through Saturday 7 am – 12 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: September 29, 2017  
 Protest Petition Deadline: November 13, 2017  
 Roll Call Hearing Date: November 27, 2017  
 Protest Hearing Date: January 24, 2018

License No.: ABRA-107382  
 Licensee: Trader Joe’s East, Inc.  
 Trade Name: Trader Joe’s #620  
 License Class: Retailer’s Class “B” Full-Service Grocery  
 Address: 2101 Wisconsin Avenue, N.W.  
 Contact: Stephen J. O’Brien: (202) 625-7700

WARD 3

ANC 3B

SMD 3B02

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 November 27, 2017 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 **January 24, 2018 at 1:30 p.m.**

**NATURE OF OPERATION**

A Full-Service Grocery store that will serve hot and cold meals, which includes salads, sandwiches, pizza, sushi, baked goods, and non-alcoholic beverages. Tasting Permit requested.

**HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/TASTING**

Sunday through Saturday 8:00 am – 10:00 pm

**DEPARTMENT OF ENERGY AND ENVIRONMENT****NOTICE OF PUBLIC HEARING AND COMMENT PERIOD****Redesignation Request & Maintenance Plan for 2008 Ozone NAAQS**

Notice is hereby given that a public hearing will be held on Wednesday, November 1, 2017, at 5:30 p.m. in Room 555 at 1200 First Street NE, 5<sup>th</sup> Floor, in Washington, D.C. 20002. This hearing provides interested parties an opportunity to comment on the District of Columbia's (District) proposed redesignation request and maintenance plan for the ground-level ozone 2008 national ambient air quality standards (NAAQS). Once the District has completed its procedures, the documents will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to its State Implementation Plan (SIP) at 40 CFR Part 52 Subpart J, pursuant to the provisions of § 107 of the federal Clean Air Act (CAA).

Ground-level ozone ambient air quality has improved in the Washington DC-MD-VA nonattainment area since the area was designated as being in nonattainment of the 2008 ozone NAAQS. 81 Fed. Reg. 26697 (May 4, 2016). EPA proposed a determination of attainment on April 25, 2017, which stated that the region had monitored attainment of the 2008 ozone NAAQS for the 2013-2015 monitoring period. 82 Fed. Reg. 19011 (April 25, 2017). The District, the State of Maryland, and the Commonwealth of Virginia are requesting that EPA concurrently approve, as a SIP revision for each state, the related CAA § 175A maintenance plan. The maintenance plan ensures that good ozone air quality will be maintained through 2030. The plan also demonstrates that ozone air quality in the Washington DC-MD-VA area will remain compliant with the 2008 ozone NAAQS, as measured by a monitoring network that meets all federal requirements.

Copies of the proposed redesignation request and maintenance plan are available for public review during normal business hours at the offices of the Department of Energy and Environment (DOEE), 1200 First Street NE, 5<sup>th</sup> Floor, Washington, DC 20002, and on-line at <https://doee.dc.gov/>.

Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers and affiliation, if any, to Ms. Alexis Tinsley at the DOEE address above or at [alexis.tinsley@dc.gov](mailto:alexis.tinsley@dc.gov) by 4:00 p.m. on November 1, 2017.

Interested parties may also submit written comments to Ms. Alexandra Catena, Monitoring and Assessment Branch, Air Quality Division, DOEE, at the same address or by email at [alexandra.catena@dc.gov](mailto:alexandra.catena@dc.gov). Questions about this SIP revision should be directed to Mr. Rama S. Tangirala by phone at (202) 535-2989 or email [rama.tangirala@dc.gov](mailto:rama.tangirala@dc.gov), or Ms. Catena at (202) 741-0862 or [alexandra.catena@dc.gov](mailto:alexandra.catena@dc.gov). The deadline for receiving public comments is at the conclusion of public hearing.

**DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION REVIEW BOARD**

**PENDING HISTORIC LANDMARK AND HISTORIC DISTRICT NOMINATIONS  
TENTATIVE PUBLIC HEARING SCHEDULE**

*(All hearing dates are subject to change, and almost certainly will change)*

<u>Property</u>	<u>Case Number</u>	<u>Scheduled Hearing Date</u>
Wardman Flats Square 519	17-18	September 2017
Kingman Park Historic District	16-19	October 2017
Equitable Life Insurance Company 3900 Wisconsin Avenue NW	17-19	October 2017
St. Paul's College 3015 4 <sup>th</sup> Street NE	17-14	October 2017
West Heating Plant 1055/1059 29 <sup>th</sup> Street NW	17-20	November 2, 2017
St. Paul's College II 3015 4 <sup>th</sup> Street NE	17-21	November 2017
Harewood Lodge 3600 Harewood Road NE	17-22	November 2017
Harrison Street Apartments 4315-4351 Harrison Street NW	17-16	November 2017
Homestead Apartments 812 Jefferson Street NW	17-15	November 2017
Wardman Tower amendment 2660 Woodley Road NW	17-10	January 2018
U.S. Dept. of Agriculture Building 12 <sup>th</sup> Street and Thomas Jefferson Drive SW	15-23	January 2018
Folger Shakespeare Library amendment 201 East Capitol Street SE	17-07	February 2018
Bloomingdale Historic District	17-17	February 2018



King David Masonic Lodge No. 28 3501 12 <sup>th</sup> Street NE	16-01	February 2018
American Theater 104-108 Rhode Island Avenue NW	17-13	March 2018
Holy Name College and Sherwood Farmhouse 1400 Shepherd Street NE	16-05	March 2018
Rock Creek Valley Historic District Reservations 308A, 339, 356, 402, 432, 433, 435, 545, 563, 630 and 635	14-19	March 2018
Carnegie Atomic Physics Observatory 5241 Broad Branch Road NW	17-01	April 2018
Downtown Historic District expansion Parts of Squares 404, 405, 428, 453, 454 and 486	13-08	April 2018
Interstate Building 1317 F Street NW	14-15	May 2018
Anderson Tire Manufacturing Company 1701 14 <sup>th</sup> Street SE	16-02	May 2018
Suter Properties 511 and 521 G Street NW	09-01	June 2018
Recorder of Deeds Building 515 D Street NW	11-19	June 2018
PEPCO Substation No. 25 2119 Champlain Street NW	16-11	July 2018
PEPCO Substation No. 13 1001 Harvard Street NW	16-10	July 2018
Buzzard Point Power Plant 1930 1 <sup>st</sup> Street SW	16-09	July 2018
Washington Animal Rescue League 71 O Street NW	16-07	September 2018
Charles W. Gilmore Residence 451 Park Road NW	15-09	September 2018
Dunblane 4340 Nebraska Avenue NW	08-11	October 2018
GSA Regional Office Building 301 (315) 7 <sup>th</sup> Street SW (801 D Street SW)	14-11	October 2018

U Street Historic District expansion Most of Square 441	08-12	October 2018
INTELSAT Headquarters Building 3400 International Drive/4000 Connecticut Avenue NW	14-06	November 2018
District of Columbia Municipal Center 300 Indiana Avenue/301 C Street NW	14-02	November 2018
Union Station amendment (interior and boundary) 50 Massachusetts Avenue NE	12-08	December 2018
Railway Express Agency 900 2 <sup>nd</sup> Street NE	16-04	December 2018
Williams-Addison House amendment 1645 31 <sup>st</sup> Street NW	07-38	January 2019
Kennedy-Warren Apartments amendment 3131-3133 Connecticut Avenue NW	09-03	January 2019
Western Bus Garage 5230 Wisconsin Avenue NW	06-03	February 2019
Sheridan Theater and Park 'n' Shop 6201 (6201-6221) Georgia Avenue NW	07-01	February 2019
Barney Circle Historic District Squares 1092, 1092-S, 1092-W and most of Squares 1077 and 1091-S	08-01	March 2019
Barney Circle Historic District amendment Squares 1092, 1092-S, 1092-W and most of Squares 1077 and 1091-S	10-19	March 2019

For additional information, including the landmark applications themselves, monthly hearing notice and agendas, please see the HPO and HPRB website at [www.preservation.dc.gov](http://www.preservation.dc.gov). For inquiries about a particular property, please contact Tim Dennee, Landmarks Coordinator, at [timothy.dennee@dc.gov](mailto:timothy.dennee@dc.gov) or 202-442-8847.

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
WEDNESDAY, NOVEMBER 15, 2017  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

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

**WARD SIX**

19618  
ANC 6C      **Application of Gillette Wing**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 601.1(c), to permit a one-family dwelling unit in an existing structure on an alley lot in the RF-3 Zone at premises 19 4<sup>th</sup> Street Rear N.E. (Square 816, Lot 18).

**WARD TWO**

19621  
ANC 2D      **Application of Richard Hilton**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201.3 from the non-conforming structure requirements of Subtitle C § 202.2, to construct a fourth story rear addition to an existing one-family dwelling in the R-1-B Zone at premises 2318 California Street N.W. (Square 2519, Lot 284).

**WARD SIX**

19622  
ANC 6C      **Application of Mark Rivetti**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, and from the rear yard requirements of Subtitle E § 306.1, to add a third floor and construct a four-story rear addition to an existing one-family dwelling in the RF-1 Zone at premises 1121 Abbey Place N.E. (Square 773, Lot 184).

**WARD FIVE**

19624  
ANC 5E      **Application of Kerameddine Dris**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5203 from the rooftop architectural element requirements of Subtitle E § 206.1(a) , to construct a new mansard roof on an existing flat in the RF-1 Zone at premises 137 S Street N.W. (Square 3107, Lot 800).

## BZA PUBLIC HEARING NOTICE

NOVEMBER 15, 2017

PAGE NO. 2

WARD TWO

19633            **Application of VI 3629 T Street, LLC**, pursuant to 11 DCMR Subtitle X,  
ANC 2E            Chapter 9, for a special exception under Subtitle D § 5201 from the rear addition  
                         requirements of Subtitle D § 306.4, to construct a three-story rear addition to an  
                         existing one-family dwelling in the R-20 Zone at premises 3629 T Street N.W.  
                         (Square 1296, Lot 804).

WARD SIX

19634            **Application of Jonathan and Kate Grabill**, pursuant to 11 DCMR Subtitle X,  
ANC 6B            Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy  
                         requirements of Subtitle E § 304.1 and from the side-yard setback requirements of  
                         Subtitle E § 307.3, and from the nonconforming structure requirements of Subtitle  
                         C § 202.2, to construct a new three-story rear addition to an existing one-family  
                         dwelling in the RF-1 Zone at premises 517 7<sup>th</sup> Street S.E. (Square 877, Lot 854).

**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.

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

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

**Do you need assistance to participate?**

BZA PUBLIC HEARING NOTICE

NOVEMBER 15, 2017

PAGE NO. 3

Amharic

ለመሳተፍ 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](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነዚህ 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](mailto: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](mailto: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](mailto: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 [Zelalem.Hill@dc.gov](mailto: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](mailto: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  
LESYLLEÉ M. WHITE, MEMBER  
CARLTON HART, VICE-CHAIRPERSON,  
NATIONAL CAPITAL PLANNING COMMISSION**

BZA PUBLIC HEARING NOTICE

NOVEMBER 15, 2017

PAGE NO. 4

**A PARTICIPATING MEMBER OF THE ZONING COMMISSION  
ONE BOARD SEAT VACANT**

**CLIFFORD W. MOY, SECRETARY TO THE BZA  
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF RESCHEDULED<sup>1</sup> PUBLIC HEARING**

**TIME AND PLACE:**                      **Thursday, January 11, 2018, @ 6:30 p.m.  
Jerrily R. Kress Memorial Hearing Room  
441 4<sup>th</sup> Street, N.W., Suite 220  
Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 16-23 (Valor Development, LLC – Voluntary Design Review @ Square 1499, Lots 802, 803, and 807)**

**THIS CASE IS OF INTEREST TO ANCs 3E and 3D**

On October 27, 2017, the Office of Zoning received an application from Valor Development, LLC (the "Applicant"), on behalf of FW DC-Spring Valley Shopping Center, LLC and Apex Real Estate Company. The Applicant is requesting design review and approval of a new mixed-use (residential and retail) development project for Lots 802, 803, and 807 in Square 1499 (the "Project Site"), pursuant to Subtitle X, Chapter 6 of Title 11 DCMR and specifically pursuant to 11-X DCMR § 601.2, which permits property owners to voluntarily apply for design review of a proposed development. As part of this design review, the Applicant seeks relief from the rear yard requirements of the MU-4 zone. The Commission can grant such flexibility as part of the design review process pursuant to 11-X DCMR § 603.1, which permits it to grant relief from certain development standards including the standards for "setbacks."<sup>2</sup>

The Project Site consists of approximately 160,788 square feet of land area and is generally bounded by Yuma Street on the north; Massachusetts Avenue on the south; 48th Street on the east; and the Spring Valley Exxon station on the west. The Project Site is currently improved with the Spring Valley Shopping Center ("SVSC") (Lots 802 and 803), the former American University Law School building ("AU Building") (Lot 806), and a vacant grocery store building, retail uses (restaurant and salon), and surface and below-grade parking (Lot 807). Collectively, Lots 806 and 807 make up Record Lot 9. The Project Site is zoned MU-4, a district in which residential and retail uses are permitted as a matter of right.

The proposed mixed-use development retains the existing SVSC and AU Building as currently developed, and consists of two new buildings on Lot 807. The SVSC has a height of approximately 25 - 30 feet and contains approximately 16,922 square feet of gross floor area ("GFA") of retail, service, and eating and drinking establishment use. The AU Building has a

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<sup>1</sup> This case was previously scheduled for October 23, 2017.

<sup>2</sup> When the current versions of Subtitles G and X were first proposed, the applicable minimum rear yard requirement was referred to as a "rear setback." This terminology was later replaced with the traditional reference to a "minimum rear yard" in current Subtitle G, but the reference to "setbacks" in 11-X DCMR § 603.1 was not similarly revised.

height of approximately 60 feet, not including the mechanical penthouse, and contains approximately 179,302 square feet of GFA of office use.

As for the two buildings proposed on Lot 807, Building 1 will have a maximum height of approximately 50 feet, plus a penthouse that will have a maximum height of 15 feet above the roof level. The lower-level of Building 1 will contain a residential lobby, a grocery store and potential additional retail/amenity space, and access to loading and below-grade parking. The remainder of Building 1, including a portion of the penthouse, will contain residential dwelling units and amenity space. The second building, Building 2, will have a maximum height of approximately 48 feet, and will also contain a penthouse with a maximum height of 15 feet above the roof level. Building 2 will contain residential dwelling units and amenity space. Collectively, the proposed mixed-use development, including the SVSC and AU Building, will contain approximately 473,502 square feet of GFA (2.94 FAR), of which approximately 257,586 square feet of GFA (1.60 FAR) will be devoted to new residential use, and approximately 215,916 square feet of GFA (1.34 FAR) will be devoted to new and existing nonresidential use. Combined, the two buildings proposed on Lot 807 will contain approximately 219 dwelling units.

Other significant aspects of the proposed mixed-use development include streetscape improvements; paving, landscape, and other improvements to surrounding alleys; a new linear park/landscaped pedestrian extension of Windom Place through the Project Site; affordable housing in excess of the minimum required by 11-C DCMR § 1003; below-grade parking; and LEED-Gold designed buildings.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Commission's Rules of Practice and Procedure, 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 DCMR Title 11-Z. 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](mailto: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 Subtitle Z § 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](mailto: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 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov); or by fax to (202) 727-6072. Please include the case number on your submission.

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

**ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, 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.**

**Do you need assistance to participate?** If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) five days in advance of the meeting. These services will be provided free of charge.

**¿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 [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

**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](mailto:Zelalem.Hill@dc.gov) cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

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

**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](mailto:Zelalem.Hill@dc.gov) 这些是免费提供的服务。

**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](mailto:Zelalem.Hill@dc.gov) trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

**ለመሳተፍ ዕርዳታ ያስፈልግዎታል?** የተለየ እርዳታ ከስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ከስፈለገዎት እባክዎን ከስተባባሪው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እንኳን አገልግሎቶች የሚሰጡት በነጻ ነው።

## 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)(9) and 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)(9) 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.)); Mayor’s Order 2009-3, dated January 15, 2009; 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 CFR Parts 98 and 99, hereby amends Chapter 2 (Child Development Facilities: District-Subsidized Child Care Services) to Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (“DCMR”).

**I. Purpose**

The purpose of this final rulemaking is to ensure equal access to stable, high-quality child care for low-income children in the District by: (1) increasing rates pursuant to the Fiscal Year 2018 Local Budget Act, which provided the Office of the State Superintendent of Education with a \$4,500,000.00 enhancement to increase reimbursement rates for child care services, specifically for infants and toddlers, provided by child development centers, child development homes and expanded homes, and relative and in-home caregivers participating in the subsidized child care program; (2) updating the sliding fee schedule to align with the “2017 Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia”; and (3) aligning the District’s regulatory framework for subsidized child care with the CCDBG Act, its implementing regulations, the [District’s Child Care and Development Fund \(“CCDF”\) Plan \(FY2016-2018\)](#), and [OSSE’s Eligibility Determinations for Subsidized Child Care Policy Manual](#).

**II. CCDBG Act, the Implementing Regulations, and the Cost Estimation Model**

On November 19, 2014, the bipartisan CCDBG Act was signed into federal law by President Obama, thereby strengthening the requirements to provide equal access to stable, high-quality child care for low income children. 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 CFR 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 subsidized child care program to support equal access to stable, high-quality child care for low-income children and promote family-friendly eligibility policies. These changes recognized the importance of access to subsidy continuity in supporting parents’ ability to achieve financial stability and children’s ability to develop nurturing relationships with their caregivers, which creates the foundation for high-quality early learning experiences. The

implementing regulations, amending 45 CFR Parts 98 and 99, add new detailed requirements that are either directly mandated by or advance the revised intent of the CCDBG Act.

#### *Cost Estimation Model*

To advance the important work of serving more low-income families in high-quality care, it is federally mandated for states to periodically assess the cost of delivering high-quality services and to then use this data to inform rates for subsidized child care. Prior to November 2014, subsidy rates have been determined using a statistically valid and reliable survey of the market rates; however, research shows that the child care market does not always reflect the actual cost of providing care at different levels of quality care. Therefore, in order to better understand the actual cost of providing child care in the District of Columbia, OSSE, with the assistance of national financing experts, developed an interactive model of the actual cost of delivering child care services at different levels of quality in both centers and homes. This interactive model used the Quality Rating and Improvement System (QRIS), the District's tiered-rate reimbursement framework, to estimate the cost of quality in both child development centers and homes. Unlike the market rate survey, the alternative cost model examines the factors affecting both revenues and expenses including size of the center (number of classrooms), ages of children, group size and ratio, income mix of families, enrollment levels, and fee collectability. The alternative cost model considers the key revenue drivers for child care centers and homes, such as family tuition and fees, third-party funding (*e.g.*, the Child and Adult Care Food Program, Head Start), and enrollment efficiency. On March 11, 2016, OSSE released a report, [Modeling the Cost of Care in the District of Columbia](#) presenting the results of its cost estimation model, the findings of which present both strengths and opportunities for improvement for the District's early care and education system.

OSSE, in partnership with the State Early Childhood Development Coordinating Council ("SECDCC") and other key stakeholders, has used the model to inform its tiered-rate reimbursement structure for the child care subsidy program and to inform other early learning policies in the District. For example, last year, based on the results of the cost estimation model and increased local funding, OSSE raised the toddler rate to align with the current licensing group size and ratios for toddlers and added a rate for the Quality Improvement Network ("QIN") to better align with the Head Start Program Performance Standards the QIN facilities are required to meet. Additionally, in this final rulemaking, using the additional \$4,500,000 of local funding, OSSE increased the infant and toddler rate for centers and homes in each tier and the special needs rates based on the results of the cost estimation model.

The CCDBG Act requires states to conduct either the market rate survey or the alternative cost estimation methodology every three years, along with an updated CCDF Plan. Since the release of the results of the cost estimation model in March 2016, a number of new policy recommendations, including the consideration of other cost and revenue drivers and alternative rate-setting approaches have been made. OSSE looks forward to further exploring these new recommendations in its updated cost estimation model report in 2018.

### **III. Notice of Proposed Rulemaking**

The Notice of Proposed Rulemaking was published in the *District of Columbia Register* on August 11, 2017, at 64 DCR 7934. The thirty-day public comment period closed on September 11, 2017, with the State Superintendent having received comments from seven (7) interested parties, including individual stakeholders, child development facilities, and non-profit organizations throughout the District. Commenters noted that this rulemaking demonstrates important movement toward funding centers and homes to better reflect the actual cost of providing quality care to infants and toddlers.

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 comments. 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. Eligibility Determinations**

Section 201 sets forth the factors for determining initial eligibility for subsidized child care, establishes a minimum twelve month eligibility period, provides a framework for maintaining eligibility and describes eligibility redeterminations. OSSE received a number of comments on this section, which are addressed below.

Subsection 201.1 outlines the requirements a child must meet in order to be eligible for subsidized child care in the District.

##### *Age Eligibility*

OSSE received five comments regarding the §201.1(a) requirement that an eligible child be under fifteen (15) years old. This age requirement is a change from the current eligibility policy, set forth in OSSE's Eligibility Determinations for Subsidized Child Care Policy Manual, which required that an eligible child be under thirteen (13) years old. This change was necessary to align the District's subsidized child care programs with the definition of "child" in the Day Care Act and the Facilities Act. While the CCDBG Act defines an eligible child as under thirteen (13) years old, the CCDBG Act provides states with flexibility to identify other eligible children to be supported by local funds. Thus, eligible children over the age of thirteen (13) years old (unless special needs or the child turned thirteen (13) years old during their twelve month eligibility period) are supported with local funds, not CCDF funds. OSSE does not expect this will have a significant impact to before and after care programs receiving subsidy. Commenters noted the age of an eligible child was not consistent throughout the rulemaking. As § 201.4(c) and the definition of child in § 299 were not amended in the proposed rulemaking to reflect the shift to increasing the age of eligibility to fifteen (15) years old. The State Superintendent agreed, recognized the drafting error, and amended the rulemaking to strike "thirteen (13)" and replace it with "fifteen (15)" in both § 201.4(c) and in the definition of child in § 299.

Another commenter requested that OSSE consider changing the maximum age of an eligible child with special needs from nineteen (19) years old to twenty-three (23) years old in §§

201.1(a), 201.4(c), and 299, in order to expand eligibility for subsidized care to students with severe disabilities, eligible for services through age twenty-two (22) that attend school-based programs and require out of school time care. OSSE considered this comment, however, OSSE has not elected to incorporate the commenter's suggested changes because the federal regulations limit the age of a child with special needs to nineteen (19) years old (*see* 45 CFR § 98.20) and local law has not contemplated providing such services to individuals beyond fifteen (15) years old, regardless if the individual has special needs.

#### *Income Eligibility*

OSSE also received a number of comments regarding the income eligibility requirements in § 201.1(f), which allows OSSE to determine income eligibility based on whether a family's annual income exceeds either two hundred and fifty percent (250%) of the Federal Poverty Level (FPL) or eighty-five percent (85%) of the District of Columbia's State Median Income (SMI) based on family size.

A commenter requested that OSSE strike two hundred fifty percent (250%) of the FPL from § 201.1(f)(1) and only use eighty-five percent (85%) of the District's SMI to determine whether a family's annual income exceeds the income threshold based on family size. The commenter recommends that this change is necessary as 85% of the District's SMI is more inclusive of families that need assistance in paying for child care services. The commenter further urges this change given the anticipated increases to the District's minimum wage rate. Another commenter specifically asked whether this income eligibility requirement took into consideration the District's gradual minimum wage increases to \$15.00 by 2020.

OSSE emphasizes that the income threshold, regardless of FPL or SMI, is always based on family size. Therefore, while using 250% of the FPL as a threshold may seem less inclusive, it is more inclusive for larger family sizes. OSSE recognizes the importance of maintaining the flexibility that having either the FPL and SMI as income eligibility thresholds maximizes eligibility of District residents and therefore, OSSE has not elected to incorporate the commenter's suggested change to strike 250% of the FPL in § 201.1(f)(1). It is also important to note that while the federal regulations set income eligibility based on the most recent SMI data, the federal regulations also provide states with the authority to consider a typical household budget of a low income family and set initial income eligibility thresholds at or below 85% of SMI, based on family size.

Another commenter correctly noted that income eligibility based on 250% of the FPL or 85% of the District's SMI is not a new rule but requested that the District's SMI be made available on OSSE website. OSSE recognizes the importance of this request and will make accessible, on our website, a table setting forth the maximum income levels based on family size for both 250% of the FPL or 85% of the District's SMI by November 30, 2017.

Finally, OSSE appreciates the concerns raised about the impact of anticipated gradual increases to the District's minimum wage to income eligibility and the cost of providing services. In the next cost model, OSSE will explore the impact of gradual increases to the District's minimum wage. However, OSSE notes that per the CCDBG Act and local policy, there are a number of protections in place for families to maintain access to subsidy even with wage fluctuations.

*Priority for Services*

Subsection 201.2 describes which groups of eligible children would receive priority in obtaining subsidized child care services if there is insufficient funding. One commenter asked if this was the first time the District had identified priority groups. The District has historically established priority groups as reflected in the current eligibility policy, OSSE's Eligibility Determinations for Subsidized Child Care Policy Manual. Another commenter raised a question about whether the children in these priority groups would still have to meet the eligibility requirements in § 201.1. The District has established priority groups for the purposes of continuing to enroll eligible children if a waiting list is in effect and for giving the first opportunity for placement if there are more applicants than available funds. If a waiting list is in effect, child's eligibility for subsidized child care must be determined before priority considerations.

Another commenter asked how OSSE planned to define "homelessness" and recommended aligning the definition of "homelessness" with the definition of "homelessness" in Section 725 of Subtitle VII-B of the McKinney-Vento Act (42 USC § 11434a). OSSE has defined "child experiencing homelessness" in OSSE's Eligibility Determinations for Subsidized Child Care Policy Manual, in a manner consistent with the McKinney-Vento Act. The omission of the definition of "child experiencing homelessness" was a drafting error. Accordingly OSSE has added the definition of "child experiencing homelessness" from OSSE's Eligibility Determinations for Subsidized Child Care Policy Manual to § 299.

Similarly, a commenter recommended OSSE define "very low income". OSSE recognizes the important role that definitions serve in setting standards and expectations. OSSE will not include a definition of "very low income" in the final rulemaking. However, "very low income" is defined in the District's State Plan as a "family of three with an income at or below \$10,045 per year." As mentioned above, OSSE is required to submit an updated CCDF State Plan by July 1, 2018 and OSSE plans to update the definition of "very low income" at that time.

*Redeterminations During a Twelve Month Eligibility Period*

The CCDBG Act's new requirement to extend eligibility to a minimum of twelve (12) months is an essential component of providing more stable child care financial assistance to families. Subsection 201.4 provides that a child shall be remain eligible for subsidized child care services during the twelve (12) month eligibility period regardless of any changes in income, that do not exceed the federal threshold of 85% of SMI, temporary changes in participation in work, training, or education activities, change of residency within the District, or a change in the child's age. OSSE received one comment recommending OSSE strike the language that a child's continued eligibility is evaluated when there is a change in income that exceeds 300% of FPL threshold. The CCDBG Act's implementing regulations clearly provide that eligible children are expected to receive a minimum of 12 months of child care services, unless family income rises above 85% of SMI. Accordingly, OSSE accepted the recommendations and the final rulemaking strikes "the lesser of three hundred percent (300%) of the FPL" from § 201.4(a) to make the section more consistent with the federal regulations. This non-substantive amendment maintains the intent of the proposed rulemaking to enable parents to maintain employment or complete

education programs, to supports both family financial stability and the relationship between children and their providers, and to comply with the CCDBG Act's implementing regulations.

On the other hand, Subsection 201.5 sets forth the limited circumstances when an eligibility redetermination may occur during a child's 12-month eligibility period. OSSE received two comments specifically on § 201.5(c) which requires an eligibility redetermination if a change in income exceeds 85% of the District's SMI. One commenter asked about how much time must have passed since the change in income before a redetermination must occur. In determining eligibility, the District evaluates an applicant's annual income, both during the initial determination and at redetermination, so irregular increases in one paycheck or in one month's earnings would not trigger a redetermination. Further, the CCDBG Act and its implementing regulations require a state to take into account irregular fluctuations in income when recalculating a family's annual income, providing that "temporary increases in income should not affect eligibility or family co-payments, including monthly or seasonal income fluctuations that show temporary increases, which if considered in isolation, may incorrectly indicate that a family is above the federal threshold of 85% of SMI, when in actuality their annual income remains at or below 85% of SMI." The other comment recommended OSSE add language to § 201.5(c) that excludes increases in the minimum wage. OSSE did not incorporate this comment because the District has maximized the continuity of subsidy receipt for the family by setting the threshold that triggers a redetermination at 85% of SMI.

#### **B. Termination of Subsidized Child Care Services**

Section 202 establishes when and under what circumstances subsidized child care services shall be terminated, and what written notice must be provided upon termination. OSSE received one comment requesting OSSE to provide written notice in a language that the applicant is able to read or offer oral translation services. OSSE appreciates the commenter's request. To ensure equal access for persons with limited English proficiency and for persons with disabilities, the federal regulations require that the District provide child care program information in multiple languages and alternative formats. Furthermore, 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.* (2016 Repl. & 2017 Supp)), OSSE, as a covered entity, is required to provide oral translation services to individuals who seek to access or participate in the services, programs or activities, and written translation services of vital documents (applications, notices, complaint forms, legal contracts, and outreach materials that inform individuals about their rights or eligibility requirements for benefits and participation) into Amharic, Chinese, French, Spanish, and Vietnamese. As the translation requirement is set forth in both federal and local law regulations, it is not necessary to insert such additional regulatory language.

#### **C. Rates Paid by District of Columbia**

Section 203 establishes the rates paid by the District of Columbia to providers for the services provided to eligible children through the District's subsidized child care program. In the Fiscal Year 2018 Local Budget Act of 2017, the District enhanced the subsidized child care services budget by \$4,500,000 to increase rates. Using the results of the cost estimation model, OSSE amended various rates in Section 203 of the proposed rulemaking. OSSE received a number of



comments regarding various rates, which ranged from comments requesting OSSE's rationale for specific rates to comments recommending OSSE distribute the funding increase evenly across all rates. OSSE considered the comments, however OSSE did not make any changes to the proposed rates in the final rulemaking.

Four comments specifically questioned why specific rates were not increased in this rulemaking. One commenter raised the concern that this rulemaking did not provide further incentives to provide care during nontraditional hours because the infant and toddler rates for nontraditional hour care increased by the same amount as traditional and extended-day hour rates. OSSE recognizes the critically important role of nontraditional care in the District's system of child care for parents with irregular and unpredictable work schedules. However, OSSE did not increase the nontraditional rate at a greater proportion in this rulemaking because pursuant to the Child Care Study Act of 2017, effective August 1, 2017 (D.C. Law 22-11), OSSE is statutorily required to conduct a study to determine if the current number of nontraditional child care facilities in the District is sufficient to meet the demands of District families; and to determine if the District should provide incentives to expand the number of nontraditional slots in the city. Another comment raised concerns that the rates in this rulemaking did not sufficiently address the heightened professional degree requirements for staff. Similarly, the Child Care Study Act of 2017 requires OSSE to conduct a study to assess the impact of the heightened professional degree requirements for staff members and the cost of care in the District.

One commenter noted that rates failed to recognize or compensate providers in low-income neighborhoods or serving a high proportion of children on subsidy. OSSE is committed to aligning incentives to accelerate achievement for those learners most in need. In the next cost model, OSSE will explore how alternative equity-focused rate setting will impact the cost of providing services in a range of settings.

In response to the comments seeking further clarification, the amendments to the various rates are addressed below.

#### *Homes and Centers – Infant and Toddler Rate*

Subsection 203.1 establishes an increased infant and toddler rate for all bronze, silver, and gold homes and centers. OSSE has increased the infant and toddler rate for centers across each tier by approximately four percent (4%) and for homes across each tier by approximately ten percent (10%). The District's cost estimation model found that infants and toddlers were the most expensive children to serve, in both homes and centers due to lower adult to child ratio requirements. Further, the greater increase in the rates for homes was informed by the cost model estimation, which revealed that homes experience more difficulty in maintaining financial sustainability.

#### *Centers - Infant and Toddler Special Needs Rate*

In Subsection 203.1, OSSE increased the infant and toddler special needs rate for bronze, silver, and gold centers by ten percent (10%). Commenters requested OSSE to clarify how centers can qualify for this rate, provide a definition of special needs, and explain why the rate was increased substantially more than the infant and toddler rate at a gold center. The special needs rate is not limited to certain centers, but rather follows the child with special needs if the center can

demonstrate that they have additional costs that warrant the higher rate. Special needs is already defined in § 299 as “conditions or characteristics of a child under the age of nineteen (19) that reflect a need for particular care, services or treatment, most commonly physical and/or mental disabilities and/or delays and is evidenced by Individual Family Service Plan (IFSP) or Individualized Education Program (IEP).” Additionally, this rate increase was informed by the cost model estimation which revealed that even with a higher subsidy reimbursement rate for children with special needs, child development centers that specialize in care for children with special needs incur significant losses. More specifically, the cost model estimation showed that the revenue gap between a gold center and a gold center serving children with special needs was significant, because the higher level of care requires more support and additional resources, such as the need for additional teaching staff and support staff with specialized credentials.

#### *Bronze – School Age Before and After Care Rate*

In Subsection 203.1(a), OSSE amended the “school age before and after” rate and the “school age before or after” rate for bronze centers and homes. As OSSE reviewed the rates prior to the publication of the proposed rulemaking, OSSE realized there were inconsistencies in the rates and that the rates for homes and centers should match.

#### *Relative Child Care and In-Home Child Care – Infant and Toddler Rate*

Subsection 203.4 establishes an increased infant and toddler rate for relative child care and in-home child care. A commenter requested that OSSE clarify why the increase in the infant and toddler rate for these providers was proportionately greater than for other providers. The rates for infant and toddler rate for relative child care and in home child care have remained the same since 2013, which is why the increase seems proportionately greater than other providers. However, these rates were also significantly lower than other rates. Additionally, it is worth noting that placement in relative or in-home child care is only allowable if families have attempted to enroll children in at least three licensed facilities or if a family works nontraditional hours and in-home care is the only possible arrangement.

#### *Relative Child Care Rate – Preschool*

Subsection 203.4(a) establishes a new preschool rate for relative child care. As OSSE reviewed the rates prior to the publication of the proposed rulemaking, OSSE realized that the relative child care rate table was missing a preschool rate. Accordingly, OSSE added the preschool rate to the relative child care rates. The “preschool rate” is the same as the “pre-school before and after” rate, and that trend is presented in all the payment rate tables in § 203.

#### *Shared Services Framework*

The District’s cost estimation model found that larger center could be more financially stable by increasing the number of children that a center served as the administrative costs would be spread across many classrooms. Accordingly, the cost modeling suggested that linking a network of homes or centers by a shared administration, or a shared-services framework, could provide similar financial stability.

Based on cost modeling suggestions, in November 2016, OSSE established the Quality Improvement Network (“QIN”) rate, which utilizes a shared-services framework that supports comprehensive services, coaching, and professional development for a network of centers and

homes. The QIN rate was not increased in this rulemaking but amended to clarify the rate is an infant and toddler rate. Additionally, to further incentivize a shared-services framework, Subsection 203.3 allows homes that are part of a Shared Services Business Alliance to collect the full payment rate from the District plus the parent co-payment.

#### **D. Schedule of Payments by Families**

Section 204 establishes an updated sliding fee scale, the system of cost sharing by a family based on income and family size, that is aligned with the 2017 Federal Poverty Guidelines. OSSE did not receive any comments on this section. However, the second page of the updated sliding fee scale, setting forth the schedule of copayments for family sizes of six to ten (6-10), was omitted in error. This final rulemaking includes the second page of the updated sliding fee scale.

#### **E. Appeal of Adverse Action**

Section 205 sets forth the appeals process for applicants, specifically providing when an applicant may appeal and what a notice for appeal shall include. OSSE received one comment requesting OSSE to clarify the length of the appeals process, as the language written in § 205.2(h) seems contradictory. OSSE appreciates the comment. To alleviate confusion, OSSE strikes the phrase “, provided however, that this process may, in fact, take more or less time” in § 205.2(h).

#### **F. Definitions**

Section 299 presents the definitions of the terms and phrases used throughout Chapter 2. In this final rulemaking, Section 299 was updated to provide new definitions. As described above, definitions of “child experiencing homelessness” and “Quality Improvement Network” were added in the final rulemaking as their omission was a drafting error. Furthermore, the definition of “child” was updated in the final rulemaking to align with the age requirements for an eligible child in § 201.1(a).

OSSE received two additional comments regarding the definitions set forth in § 299. One comment requested that OSSE remove “child support” from the definition of gross countable income. Another commenter requested that the definition for the term “teen” was separated from the definition of the term “young adult”. OSSE considered both comments; however, OSSE has elected not to incorporate the requested changes.

### **IV. Conclusion**

The State Superintendent greatly appreciates the comments that the public submitted. OSSE thoroughly considered all the comments. Changes were made to correct grammar, clarify initial intent, clarify proposed procedures, or lessen the burdens established by the proposed rules. The changes do not substantially alter the intent, meaning, or application of the proposed rules or exceed the scope of the rules as published with the Notice of Proposed Rulemaking.

These rules were adopted as final on September 21, 2017 and will be effective upon publication of this notice in the *D.C. Register*.

**Chapter 2, CHILD DEVELOPMENT FACILITIES: DISTRICT-SUBSIDIZED CHILD CARE SERVICES, of Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended as follows:**

**Section 200, GENERAL PROVISIONS, Section 201, ELIGIBILITY DETERMINATIONS, and Section 202, TERMINATION OF SUBSIDIZED CHILD CARE SERVICES, are added to read as follows:**

**200 GENERAL PROVISIONS**

200.1 The Office of the State Superintendent of Education (“OSSE”) shall administer and enforce the requirements of the District of Columbia’s subsidized child care program which shall provide financial assistance to families with eligible children seeking access to child care while the parent(s) or guardian(s) work or attend job training or educational programs, pursuant to this chapter.

200.2 A child’s eligibility to receive subsidized child care services shall be determined in accordance with this Chapter by OSSE or an entity authorized by OSSE to conduct eligibility determinations, including the District of Columbia Department of Human Services, Level II providers, or a Shared Services Business Alliance.

**201 ELIGIBILITY DETERMINATIONS**

201.1 To be eligible for subsidized child care in the District, a child shall, at the time of eligibility determination or redetermination:

- (a) Be under fifteen (15) years old, or under nineteen (19) years old if the child has special needs;
- (b) Reside with a parent(s), guardian(s), or adult with legal relationship to child;
- (c) Be a United States citizen or an alien lawfully admitted for permanent residence or otherwise lawfully and permanently residing in the United States;
- (d) Be a resident of the District of Columbia;
- (e) Meet the requirements for one of the following categories of need:
  - (1) Resides with parent(s) who are working or attending a job training or education program;

- (2) Resides with parent(s) who is seeking employment or engaging in job search; or
- (3) Receives, or needs to receive, protective services or is considered a vulnerable child, as defined herein; and
- (f) Resides with a parent(s) or guardian(s) whose:
  - (1) Gross annual income does not exceed two hundred fifty percent (250%) of the Federal Poverty Level (FPL) or eighty-five percent (85%) of the District of Columbia's State Median Income (SMI) based on family size, whichever is lower; and
  - (2) Family assets do not exceed one million dollars (\$1,000,000).

201.2 If there is insufficient funding for the District's subsidized child care program and a waitlist is put into effect because there are more applicants than available funds, OSSE shall give priority for subsidized child care services to:

- (a) Children of families with very low family income;
- (b) Children with special needs, including vulnerable children; and
- (c) Children experiencing homelessness.

201.3 Once a child is determined as eligible for receiving child care subsidy assistance, the family or individual will be considered to meet all eligibility requirements for such assistance and will receive assistance for not less than twelve (12) months before a redetermination of eligibility.

201.4 A child shall remain eligible for the District of Columbia's child care subsidy program throughout the twelve (12) month eligibility period regardless of:

- (a) A change in gross annual family income, if the gross annual family income does not exceed eighty-five percent (85%) of the SMI for a family of the same size;
- (b) A temporary change, as defined in this chapter, in the child's parent(s) or guardian(s) ongoing status;
- (c) A change in the child's age, including turning fifteen (15) during the eligibility period; or
- (d) Any change in residency *within* the District of Columbia.

201.5 A child's eligibility for the District of Columbia's child care subsidy program

shall be redetermined during the twelve (12) month eligibility period in the following situations:

- (a) Any change in residency to outside of the District of Columbia;
- (b) Non-temporary change, as defined in this chapter; or
- (c) A change in income, if the family's annual income exceeds eighty-five percent (85%) of the SMI for a family of the same size.

201.6 Applicants shall notify OSSE, or its authorized designee, within ten (10) calendar days of the occurrence of any of the changes listed in Subsection 201.5.

201.7 Families who are classified as being over the income threshold at the end of the twelve (12) month eligibility period are to still be considered eligible for subsidized child care services if the gross annual family income does not exceed three hundred percent (300%) of the 2017 FPL or eighty-five percent (85%) of the current SMI, whichever is lower.

201.8 Any family already designated as eligible for subsidized child care and receiving such services whose income reaches three hundred percent (300%) of FPL or eighty-five percent (85%) of the current SMI shall continue to receive subsidized care for no more than three (3) months. At the end of the three (3) month period of continued assistance, if the gross annual family income is below 300% of FPL or 85% of the most current SMI, assistance cannot be terminated and the child shall continue receiving assistance until the next scheduled redetermination.

201.9 Applicants cannot be required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process.

201.10 OSSE, or its authorized designee, may deny an application for subsidized child care services if:

- (a) The applicant does not satisfy the eligibility requirements for relationship, the child's citizenship or status within the United States, residency, need and/or income;
- (b) The applicant has failed to provide all required documentation for the establishment of eligibility within thirty (30) days of the date of the application;
- (c) The applicant's information is found to be false; or
- (d) Funds are not available for placement for a family that is not provided for in Subsection 201.2. In this case, the applicant's name may be added to a waiting list.

201.11 When the application for subsidized care is denied, OSSE, or its authorized designee, shall issue written notice to the applicant that provides:

- (a) The decision;
- (b) The basis for the decision, including legal citations where appropriate; and
- (c) An explanation of the applicant's right to an Administrative Hearing.

## **202 TERMINATION OF SUBSIDIZED CHILD CARE SERVICES**

202.1 During a twelve (12) month eligibility period, subsidized child care services shall be terminated by the eligibility staff as a result of any of the following circumstances:

- (a) Based on an eligibility redetermination for reasons set forth in Subsection 201.5;
- (b) The applicant is no longer a resident of the District of Columbia;
- (c) The applicant has failed to complete an eligibility review, including providing the required supporting documentation, in a timely manner; or
- (d) An applicant has been found through investigation to have committed child care eligibility fraud.

202.2 Subsidized child care services may be immediately terminated by OSSE, unless a hearing request is filed, for any of the following circumstances:

- (a) The applicant is no longer a resident of the District of Columbia; or
- (b) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

202.3 An applicant who has been confirmed through investigation to have committed fraud may be permanently barred from receiving subsidized child care services through the District's subsidy program. Child care eligibility fraud includes, but is not limited to, the following:

- (a) With intent to deceive, withholding information regarding eligibility factors such as gross annual family income, number of family members, ages of family members, or the recipient's hours of employment or training;
- (b) Knowingly using child care services for an ineligible child; or

- (c) Intentionally failing to report any changes which would affect the child’s eligibility for child care benefits.

202.4 All suspected cases of fraud shall be referred to OSSE immediately.

202.5 OSSE may take further action if there is a determination that fraud has occurred, such as collection from the parent(s) or guardian(s) of funds improperly spent on child care or referral to the Office of the Attorney General or the United States Attorney for possible civil or criminal action.

202.6 OSSE shall give prior written notice of the proposed termination from subsidized child care services for all instances of termination with the exception of those that require immediate termination.

202.7 Written notice of the proposed termination from subsidized child care services shall be given ninety (90) calendar days prior to the date of termination and shall include:

- (a) The effective date of termination;
- (b) The reason for the termination;
- (c) An opportunity to cure within a stated timeframe, if appropriate; and
- (d) An explanation of the parent(s) or guardian(s)’ right to appeal the decision.

202.8 If the applicant complies with all requirements within the stated time frame, the termination shall be voided prior to the date of termination.

**Subsections 203.1, 203.2, 203.3 and 203.4 in Section 203, RATES PAID BY DISTRICT OF COLUMBIA, are amended to read as follows:**

203.1 The District of Columbia shall pay the following rates per day for child care services, less the parent fee as required by the parent sliding fee scale, to child development centers and child development homes that meet their respective requirements of the Tiered Rate Reimbursement System, when appropriate and funds are available.

- (a) Payment rates for child development centers and child development homes (including satellite homes) for traditional, extended day, and nontraditional hours of care at the Bronze Tier shall be as follows:

<b>Bronze Tier - Child Development Center</b>						
	<b>Full-Time Traditional</b>	<b>Part-Time Traditional</b>	<b>Extended Day</b>	<b>Extended Day</b>	<b>Full-Time Nontraditional</b>	<b>Part-Time Nontraditional</b>



			<b>Full-Time</b>	<b>Part-Time</b>		
Infant and Toddler	\$ 48.68	\$ 29.20	\$ 53.55	\$ 34.07	\$ 60.83	\$36.51
Infant and Toddler Special Needs	\$ 77.78	\$ 46.40	--	--	--	--
Pre-school	\$ 29.21	\$ 17.53	\$ 32.13	\$ 20.45	\$ 36.51	\$ 21.91
Pre-school Before and After	\$ 29.21	\$ 17.53	\$ 32.13	\$ 20.45	--	--
School-Age Before <i>and</i> After	\$ 20.00	\$ 12.25	\$ 22.00	\$ 13.20	\$ 24.59	\$ 14.75
School-Age Before <i>or</i> After	\$ 20.00	\$ 9.19	--	--	--	--
Pre-school and School-Age Special Needs	\$ 61.49	\$ 36.68	--	--	--	--

<b>Bronze Tier - Child Development Home</b>						
	<b>Full-Time Traditional</b>	<b>Part-Time Traditional</b>	<b>Extended Day Full-Time</b>	<b>Extended Day Part-Time</b>	<b>Full-Time Nontraditional</b>	<b>Part-Time Nontraditional</b>
Infant and Toddler	\$ 36.04	\$ 21.62	\$ 39.61	\$ 25.22	\$ 45.05	\$ 27.04
Pre-school	\$ 22.03	\$ 13.22	\$ 24.23	\$ 15.42	\$ 27.53	\$ 16.52
Pre-school Before and After	\$ 22.03	\$ 13.22	\$ 24.23	\$ 15.42	--	--
School-Age Before <i>and</i> After	\$ 20.00	\$ 12.25	\$ 22.00	\$ 13.20	\$ 24.59	\$ 14.75
School-Age Before <i>or</i> After	\$ 20.00	\$ 9.19	--	--	--	--

- (b) The payment rates for child development centers and child development homes (including satellite homes) for traditional, extended day, and nontraditional hours of care at the Silver Tier shall be as follows:

<b>Silver Tier - Child Development Center</b>						
	<b>Full-Time Traditional</b>	<b>Part-Time Traditional</b>	<b>Extended Day Full-Time</b>	<b>Extended Day Part-Time</b>	<b>Full-Time Nontraditional</b>	<b>Part-Time Nontraditional</b>
Infant and Toddler	\$56.51	\$ 33.90	\$ 62.17	\$ 39.56	\$ 70.64	\$ 42.39
Infant and Toddler Special Needs	\$ 77.78	\$ 46.40	--	--	--	--
Pre-school	\$ 35.60	\$ 21.36	\$ 39.16	\$ 24.92	\$ 44.50	\$ 26.70
Pre-school Before and After	\$ 35.60	\$ 21.36	\$ 39.16	\$ 24.92	--	--
School-Age Before <i>and</i> After	\$ 25.43	\$ 15.26	\$ 27.97	\$ 16.79	\$ 30.92	\$ 18.55
School-Age Before <i>or</i> After	\$ 25.43	\$ 11.45	--	--	--	--
Pre-school and School-Age	\$ 61.49	\$ 36.68	--	--	--	--

Special Needs						
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<b>Silver Tier - Child Development Home</b>						
	<b>Full-Time Traditional</b>	<b>Part-Time Traditional</b>	<b>Extended Day Full-Time</b>	<b>Extended Day Part-Time</b>	<b>Full-Time Nontraditional</b>	<b>Part-Time Nontraditional</b>
Infant and Toddler	\$ 39.30	\$ 23.58	\$ 43.24	\$ 27.51	\$ 49.14	\$29.48
Pre-school	\$ 24.53	\$ 14.72	\$ 26.98	\$ 17.17	\$ 30.66	\$ 18.40
Pre-school Before and After	\$ 24.53	\$ 14.72	\$ 26.98	\$ 17.17	--	--
School-Age Before <i>and</i> After	\$ 22.90	\$ 13.74	\$ 25.19	\$ 15.11	\$ 27.08	\$ 16.25
School-Age Before <i>or</i> After	\$ 22.90	\$ 10.31	--	--	--	--

(c) The payment rates for child development centers and child development homes (including satellite homes) for traditional, extended day, and nontraditional hours of care at the Gold Tier shall be as follows:

<b>Gold Tier - Child Development Center</b>						
	<b>Full-Time Traditional</b>	<b>Part-Time Traditional</b>	<b>Extended Day Full-Time</b>	<b>Extended Day Part-Time</b>	<b>Full-Time Nontraditional</b>	<b>Part-Time Nontraditional</b>
Infant and Toddler	\$ 65.07	\$ 39.05	\$ 71.58	\$ 45.55	\$ 81.34	\$ 48.81
Infant and Toddler Special Needs	\$ 77.78	\$ 46.40	--	--	--	--
Pre-school	\$ 42.00	\$ 25.20	\$ 46.20	\$ 29.40	\$ 52.50	\$ 31.50
Pre-school Before and After	\$ 42.00	\$ 25.20	\$ 46.20	\$ 29.40	--	--
School-Age Before <i>and</i> After	\$ 32.00	\$ 19.20	\$ 35.20	\$ 21.12	\$ 38.91	\$ 23.35
School-Age Before <i>or</i> After	\$ 32.00	\$ 14.40	--	--	--	--
Pre-school and School-Age Special Needs	\$ 61.49	\$ 36.68	--	--	--	--

<b>Gold Tier - Child Development Home</b>						
	<b>Full-Time Traditional</b>	<b>Part-Time Traditional</b>	<b>Extended Day Full-Time</b>	<b>Extended Day Part-Time</b>	<b>Full-Time Nontraditional</b>	<b>Part-Time Nontraditional</b>
Infant and Toddler	\$ 44.28	\$ 26.57	\$ 48.71	\$ 31.00	\$ 55.34	\$ 33.21
Pre-school	\$ 28.00	\$ 16.80	\$ 30.80	\$ 19.60	\$ 35.00	\$ 21.00
Pre-school Before and After	\$ 28.00	\$ 16.80	\$ 30.80	\$ 19.60	--	--
School-Age Before <i>and</i> After	\$ 25.80	\$ 15.48	\$ 28.38	\$ 17.03	\$ 30.51	\$ 18.31
School-Age	\$ 25.80	\$ 11.61	--	--	--	--

Before <i>or</i> After						
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- (d) The payment rate for infants and toddlers enrolled in a child development home in the Quality Improvement Network shall be \$65.07.
- (e) The payment rate for Quality Improvement Network enrolled infants and toddlers in a child development center shall be \$83.75.

203.2 The District of Columbia shall pay child development centers in the Level II Provider program the full amount of the payment rate pursuant to Subsection 203.1 and shall allow such centers to collect a parent co-pay, based on the sliding fee scale set forth in Subsection 204.8, if applicable.

203.3 The District of Columbia shall pay child development homes in OSSE’s Shared Services Business Alliance the full amount of the payment rate pursuant to Subsection 203.1 and shall allow such homes to collect a parent co-pay, based on the sliding fee scale set forth in Subsection 204.8, if applicable.

203.4 The District of Columbia shall pay the following rates per day for child care services to relative and in-home caregivers, when appropriate and funds are available:

- (a) The payment rates for relative caregivers for traditional, extended day, and nontraditional hours of care shall be as follows:

Relative Child Care Rates						
Age Group	Full-Time Traditional	Part-Time Traditional	Extended Day Full-Time	Extended Day Part-Time	Full-Time Nontraditional	Part-Time Nontraditional
Infant and Toddler	\$ 24.18	\$ 14.50	\$ 26.60	\$ 16.93	\$ 30.23	\$ 18.14
Pre-school	\$ 14.33	\$ 8.60	--	--	--	--
Pre-school Before and After	\$ 14.33	\$ 8.60	--	--	--	--
School-Age Before <i>and</i> After	\$ 13.92	\$ 8.35	\$ 15.31	\$ 9.74	\$ 17.40	\$ 10.44
School-Age Before <i>or</i> After	\$ 13.92	\$ 4.18	--	--	--	--

- (b) The payment rates for in-home caregivers for traditional, extended day, and nontraditional hours of care shall be as follows:

In-Home Child Care Rates						
Age Group	Full-Time Traditional	Part-Time Traditional	Extended Day Full-Time	Extended Day Part-Time	Full-Time Nontraditional	Part-Time Nontraditional
Infant and Toddler	\$ 14.18	\$ 8.51	\$ 15.60	\$ 9.93	\$ 17.73	\$ 10.64

Pre-School	\$ 8.70	\$ 5.22	\$ 9.57	\$ 6.09	\$ 10.88	\$ 6.53
Pre-school Before and After	\$ 8.70	\$ 5.22	\$ 9.57	\$ 6.09	--	--
School-Age Before <i>and</i> After	\$ 7.54	\$ 4.52	\$ 8.29	\$ 5.28	\$ 9.43	\$ 5.66
School-Age Before <i>or</i> After	\$ 7.54	\$ 4.14	--	--	--	--

**Section 204, SCHEDULE OF PAYMENTS BY FAMILIES, is amended in its entirety to read as follows:**

- 204.1 Parent(s) or guardian(s) shall pay a co-payment toward the cost of child care services, based on the sliding fee scale set forth in Subsection 204.8, unless exempt from co-payment.
  
- 204.2 The following shall be exempt from co-payment:
  - (a) Temporary Assistance to Needy Families (“TANF”) recipients in countable activities other than employment;
  - (b) TANF payees in countable activities;
  - (c) TANF parent(s) or guardian(s) with physical or mental, disabilities;
  - (d) Unemployed parent(s) or guardian(s) receiving vocational rehabilitation services;
  - (e) Children receiving Child Protective Services;
  - (f) Children in foster care;
  - (g) Children experiencing homelessness;
  - (h) Teen or young adult parent(s) in junior and senior high school; and
  - (i) Working parent(s) or guardian(s) or benefit recipients with income levels falling below one hundred percent (100%) of the FPL.
  
- 204.3 A family with a gross annual family income greater than one hundred percent (100%) but less than or equal to two hundred fifty percent (250%) of the FPL shall be required to pay the co-payment amount(s) set forth in Subsection 204.8.
  
- 204.4 The co-payment requirements in this chapter shall apply only to the two (2) youngest children in a family.
  
- 204.5 There shall be no co-payment requirement for a third child or any additional children of a family.

204.6 Parents shall be responsible for paying co-payments directly to the authorized child care provider, including a child development facility, relative care, in-home care provider, or authorized designee such as a shared service business alliance.

204.7 A child care provider shall not require parents to pay additional mandatory fees to the authorized child care provider beyond the established co-payment, set forth in Subsection 204.8.

204.8 The following schedule of co-payments shall apply to services provided by a child development facility or relative or in-home caregiver providing child care services subsidized by the District of Columbia.

Sliding Fee Scale 2017						Daily Co-Pay			
						Children in Care			
%FPG	Annual Income by Family Size					Full Time		Part Time	
	1	2	3	4	5	First	Second	First	Second
0-50%	\$6,030	\$8,120	\$10,210	\$12,300	\$14,390	\$ -	\$ -	\$ -	\$ -
51-60%	\$7,236	\$9,744	\$12,252	\$14,760	\$17,268	\$ -	\$ -	\$ -	\$ -
61-70%	\$8,442	\$11,368	\$14,294	\$17,220	\$20,146	\$ -	\$ -	\$ -	\$ -
71-80%	\$9,648	\$12,992	\$16,336	\$19,680	\$23,024	\$ -	\$ -	\$ -	\$ -
81-90%	\$10,854	\$14,616	\$18,378	\$22,140	\$25,902	\$ -	\$ -	\$ -	\$ -
91-100%	\$12,060	\$16,240	\$20,420	\$24,600	\$28,780	\$ -	\$ -	\$ -	\$ -
101-110%	\$13,266	\$17,864	\$22,462	\$27,060	\$31,658	\$ 1.02	\$ 0.35	\$ 0.51	\$ 0.18
111-120%	\$14,472	\$19,488	\$24,504	\$29,520	\$34,536	\$ 1.30	\$ 0.45	\$ 0.65	\$ 0.23
121-130%	\$15,678	\$21,112	\$26,546	\$31,980	\$37,414	\$ 1.61	\$ 0.56	\$ 0.80	\$ 0.28
131-140%	\$16,884	\$22,736	\$28,588	\$34,440	\$40,292	\$ 1.95	\$ 0.68	\$ 0.97	\$ 0.34
141-150%	\$18,090	\$24,360	\$30,630	\$36,900	\$43,170	\$ 2.32	\$ 0.80	\$ 1.16	\$ 0.40
151-160%	\$19,296	\$25,984	\$32,672	\$39,360	\$46,048	\$ 2.72	\$ 0.94	\$ 1.36	\$ 0.47
161-170%	\$20,502	\$27,608	\$34,714	\$41,820	\$48,926	\$ 3.15	\$ 1.09	\$ 1.58	\$ 0.55
171-180%	\$21,708	\$29,232	\$36,756	\$44,280	\$51,804	\$ 3.62	\$ 1.25	\$ 1.81	\$ 0.63
181-190%	\$22,914	\$30,856	\$38,798	\$46,740	\$54,682	\$ 4.11	\$ 1.43	\$ 2.06	\$ 0.71
191-200%	\$24,120	\$32,480	\$40,840	\$49,200	\$57,560	\$ 4.64	\$ 1.61	\$ 2.32	\$ 0.80
201-210%	\$25,326	\$34,104	\$42,882	\$51,660	\$60,438	\$ 5.20	\$ 1.80	\$ 2.60	\$ 0.90
211-220%	\$26,532	\$35,728	\$44,924	\$54,120	\$63,316	\$ 5.78	\$ 2.00	\$ 2.89	\$ 1.00
221-230%	\$27,738	\$37,352	\$46,966	\$56,580	\$66,194	\$ 6.40	\$ 2.22	\$ 3.20	\$ 1.11
231-240%	\$28,944	\$38,976	\$49,008	\$59,040	\$69,072	\$ 7.05	\$ 2.44	\$ 3.53	\$ 1.22
241-250%	\$30,150	\$40,600	\$51,050	\$61,500	\$71,950	\$ 7.73	\$ 2.68	\$ 3.87	\$ 1.34
251-260%	\$31,356	\$42,224	\$53,092	\$63,960	\$74,828	\$ 8.44	\$ 2.93	\$ 4.22	\$ 1.46
261-270%	\$32,562	\$43,848	\$55,134	\$66,420	\$77,706	\$ 9.18	\$ 3.18	\$ 4.59	\$ 1.59
271-280%	\$33,768	\$45,472	\$57,176	\$68,880	\$80,584	\$ 9.96	\$ 3.45	\$ 4.98	\$ 1.73
281-290%	\$34,974	\$47,096				\$ 10.76	\$ 3.73	\$ 5.38	\$ 1.86
291-300%	\$36,180					\$ 11.60		\$ 5.80	\$ -

Sliding Fee Scale 2017						Daily Co-Pay			
						Children in Care			
%FPG	Annual Income by Family Size					Full Time		Part Time	
	6	7	8	9	10	First	Second	First	Second
0-50%	\$16,480	\$18,570	\$20,660	\$22,750	\$24,840	\$ -	\$ -	\$ -	\$ -
51-60%	\$19,776	\$22,284	\$24,792	\$27,300	\$29,808	\$ -	\$ -	\$ -	\$ -
61-70%	\$23,072	\$25,998	\$28,924	\$31,850	\$34,776	\$ -	\$ -	\$ -	\$ -
71-80%	\$26,368	\$29,712	\$33,056	\$36,400	\$39,744	\$ -	\$ -	\$ -	\$ -
81-90%	\$29,664	\$33,426	\$37,188	\$40,950	\$44,712	\$ -	\$ -	\$ -	\$ -
91-100%	\$32,960	\$37,140	\$41,320	\$45,500	\$49,680	\$ -	\$ -	\$ -	\$ -
101-110%	\$36,256	\$40,854	\$45,452	\$50,050	\$54,648	\$ 1.02	\$ 0.35	\$ 0.51	\$ 0.18
111-120%	\$39,552	\$44,568	\$49,584	\$54,600	\$59,616	\$ 1.30	\$ 0.45	\$ 0.65	\$ 0.23
121-130%	\$42,848	\$48,282	\$53,716	\$59,150	\$64,584	\$ 1.61	\$ 0.56	\$ 0.80	\$ 0.28
131-140%	\$46,144	\$51,996	\$57,848	\$63,700	\$69,552	\$ 1.95	\$ 0.68	\$ 0.97	\$ 0.34
141-150%	\$49,440	\$55,710	\$61,980	\$68,250	\$74,520	\$ 2.32	\$ 0.80	\$ 1.16	\$ 0.40
151-160%	\$52,736	\$59,424	\$66,112	\$72,800	\$79,488	\$ 2.72	\$ 0.94	\$ 1.36	\$ 0.47
161-170%	\$56,032	\$63,138	\$70,244	\$77,350	\$84,456	\$ 3.15	\$ 1.09	\$ 1.58	\$ 0.55
171-180%	\$59,328	\$66,852	\$74,376	\$81,900	\$89,424	\$ 3.62	\$ 1.25	\$ 1.81	\$ 0.63
181-190%	\$62,624	\$70,566	\$78,508	\$86,450	\$94,392	\$ 4.11	\$ 1.43	\$ 2.06	\$ 0.71
191-200%	\$65,920	\$74,280	\$82,640	\$91,000	\$99,360	\$ 4.64	\$ 1.61	\$ 2.32	\$ 0.80
201-210%	\$69,216	\$77,994	\$86,772	\$95,550		\$ 5.20	\$ 1.80	\$ 2.60	\$ 0.90
211-220%	\$72,512	\$81,708	\$90,904	\$100,100		\$ 5.78	\$ 2.00	\$ 2.89	\$ 1.00
221-230%	\$75,808	\$85,422	\$95,036			\$ 6.40	\$ 2.22	\$ 3.20	\$ 1.11
231-240%	\$79,104	\$89,136				\$ 7.05	\$ 2.44	\$ 3.53	\$ 1.22
241-250%	\$82,400	\$92,850				\$ 7.73	\$ 2.68	\$ 3.87	\$ 1.34
251-260%	\$85,696					\$ 8.44	\$ 2.93	\$ 4.22	\$ 1.46
261-270%	\$88,992					\$ 9.18	\$ 3.18	\$ 4.59	\$ 1.59
271-280%	\$92,288					\$ 9.96	\$ 3.45	\$ 4.98	\$ 1.73
281-290%						\$ 10.76	\$ 3.73	\$ 5.38	\$ 1.86
291-300%						\$ 11.60		\$ 5.80	\$ -

204.9 The schedule of co-payments may be revised periodically.

204.10 Co-payment may not be increased during a twelve (12) month eligibility period but may be decreased if any one of the following occurs:

- (a) Change in qualifying activity;
- (b) Decrease in income; or
- (c) Increase in family size.

**A new Section 205, APPEAL OF ADVERSE ACTION, is added to read as follows:**

**205 APPEAL OF ADVERSE ACTION**

205.1 Every applicant has the right to appeal a decision made by OSSE or an authorized entity as a result of any of the following adverse actions:

- (a) Denial of application for subsidized child care services;
- (b) Termination of services; or
- (c) An inaccurate co-payment computation.

205.2 OSSE or authorized entity shall inform the applicant of his or her right to appeal any decision by requesting an administrative hearing. The notice shall include the following information:

- (a) The process for requesting an administrative hearing and where the appeal must be submitted;
- (b) The requirement that the appeal be in writing and received within fifteen (15) calendar days of the adverse decision;
- (c) The availability of the eligibility staff to assist any applicant who states orally or in writing that he or she wants to appeal a decision, in writing the appeal, and that even if such help is provided, the applicant must review, approve, and sign the appeal request;
- (d) The fact that if the case is in the application stage, no services will be provided unless and until an appeal decision to the contrary is issued;
- (e) The fact that if an appeal of a decision to terminate services or increase a copayment is filed timely, subsidized child care will continue to be provided unless and until a decision to the contrary is issued;
- (f) How a hearing will be scheduled by the Office of Administrative Hearings;
- (g) The possibility of the need for additional documentation to be provided to the Hearing Officer;
- (h) The appeal process is expected to be complete within sixty (60) days after the date of receipt of the request for an administrative hearing; and
- (i) The decision of the Hearing Officer will be provided in writing to all parties.

**Section 299, DEFINITIONS, Subsection 299.1, is amended by replacing the definition of**

**“child” with the following:**

**Child** - an individual who is less than fifteen (15) years of age, or under nineteen (19) years of age with special needs.

**Subsection 299.1 is amended by adding the following definitions:**

**Applicant** - The parent(s) or guardian(s) who makes initial application for subsidized child care.

**Child Experiencing Homelessness** -- A child who lacks a fixed, regular, and adequate nighttime residence and includes children and youths:

- (A) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- (B) Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- (C) Living in emergency or transitional shelters (including DC transitional housing); are abandoned in hospitals; or are awaiting foster care placement;
- (D) In a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- (E) Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- (F) Migratory children, as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 USCS § 6399), who qualify as homeless because they live in circumstances described above; and
- (G) Unaccompanied youth, including youths who are not in physical custody of a parent or guardian, who qualify as homeless because they live in circumstances described above.

**Fraud** – Any action by any person who obtains or attempts to obtain, or aids or abets any person, who pursuant to a scheme to deceive, knowingly falsifies, conceals or otherwise fails to disclose, covers up a material fact, or makes or uses any false statement or document to obtain a benefit or payment described in this chapter to which the applicant or provider would otherwise not be entitled. A failure to disclose a material fact that results in obtaining or continuing to receive child care subsidy funds or services for which the parent or provider is not entitled.

**Hearing officer** – An Office of Administrative Hearings administrative law judge.



**Gross countable income** - The portion of the annual gross family income of the family all family members living in the same household who are included for purposes of determining family size that includes:

- (a) Gross salaries or wages of one or both parent(s) or guardian(s), including regularly received commissions, tips, and overtime;
- (b) Net income from self-employment (business expenses shall be deducted from gross receipts);
- (c) Other income of parent(s) or guardian(s) such as Social Security and Veterans Benefits;
- (d) Income of children receiving subsidized care such as child support or Social Security Income;
- (e) Unemployment Compensation;
- (f) Workers Compensation;
- (g) Alimony; and
- (h) The portion of an educational grant that is specifically designated for living expenses.

**Non-temporary change** - Any cessation of work or attendance at a training or education program that exceeds 90 calendar days.

**Provider** - A licensed child development center, a licensed family child care home or expanded home, or a person approved as an in-home or relative caregiver.

**Qualifying Activity** - A qualifying activity shall include:

- (a) Employment (including through an agency or self-employed);
- (b) Job Search;
- (c) Training Program;
- (d) Work Experience Program;
- (e) Job Corps;
- (f) Teen or young adult parent in high school or G.E.D. Program

- (g) Student in Undergraduate Program; or
- (h) Summer School Program (including undergraduate program).

**Recipient** - An individual child who is determined eligible for and receives subsidized child care.

**Shared Services Business Alliance** – An entity authorized by OSSE to conduct eligibility determinations, collect payments, and provide centralized back office supports for a network of licensed child development facilities in the District of Columbia.

**Teen or Young Adult Parent** - A parent under the age of twenty-six (26) years old.

**Temporary Change** - A temporary change shall include any of the following:

- (a) Any time limited absence from work for employed parent or guardian due to reasons such as need to care for a family member or an illness;
- (b) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;
- (c) Any student holiday or break for a parent or guardian participating in training or education;
- (d) Any reduction in work, training or education hours to less than twenty hours per week, as long as the parent or guardian is still working or attending training or education;
- (e) Any other cessation of work or attendance at a training or education program that does not exceed ninety (90) calendar days;
- (f) Any change in age, including turning fifteen (15) years old during the eligibility period; and
- (g) Any change in residency within the District of Columbia.

**Vulnerable child** - For the purposes of eligibility:

- (a) A child with special needs;
- (b) A child experiencing homelessness;

- (c) A child in foster care;
- (d) A child of an adult with disabilities; or
- (e) A child of recipients of vocational rehabilitation services.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (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 (2016 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of a new Chapter 101 (*Services My Way* Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules codify the program policies and procedures for the District of Columbia Medicaid participant-directed *Services My Way* program, offered under the Home and Community-Based Services Waiver for the Elderly and Persons with Physical Disabilities (EPD Waiver).

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 20, 2016 at 63 DCR 007732. The comment period officially closed on June 20, 2016. Comments were received from Disability Rights DC at University Legal Services and IONA. DHCF carefully considered all comments received and incorporated changes in response to the comments in the Notice of Second Emergency and Proposed Rulemaking published in the *D.C. Register* on December 9, 2016 at 63 DCR 015171. No comments were received in response to the Notice of Second Emergency and Proposed Rulemaking. However, DHCF was required to issue third emergency and proposed rules in order to incorporate changes made as a result of the renewal of the EPD Waiver, which were detailed in the Notice of Third Emergency and Proposed Rulemaking published in the *D.C. Register* on June 16, 2017 at 64 DCR 005708. DHCF received one (1) set of comments on the third emergency and proposed rules from Disability Rights DC (DRDC). DHCF carefully considered the comments received and, for the reasons noted below, determined that no substantive changes were necessary. Therefore, no substantive changes have been made for these final rules. As noted below, four (4) minor technical corrections have been made for these final rules.

The concerns DRDC expressed in its comments are related to the timeframes for each step of the enrollment process for the *Services My Way* program. DRDC indicated that the regulations should detail specific timeframes in both Section 10101 (Outreach and Enrollment) and Section 10107 (Budget Formulation) and provided suggested timeframes for each stage in the enrollment and authorization processes. DHCF acknowledges and shares DRDC's concern regarding timely enrollment of beneficiaries in the *Services My Way* program. However, DHCF declines to add specific timeframes for each step of the enrollment process, including budget review and approval, to these rules as there are several steps in the program enrollment process that DHCF does not control and that the beneficiary and potential participant-directed workers (PDWs) must complete in order for the beneficiary to enroll in the program. Therefore, DHCF cannot hold the agency to requirements that are beyond its control to meet.

The *Services My Way* program enrollment process is tailored to each individual beneficiary who requests enrollment in the program and the enrollment timeframes depend on the beneficiary’s specific circumstances, as well as actions that the beneficiary and his or her potential PDWs must complete in order for enrollment to proceed. For example, a beneficiary must identify potential PDWs and determine the rate of pay for each PDW. Similarly, a beneficiary’s potential PDWs must obtain the required CPR and First Aid certifications, as well as complete a background check through the Department of Health. If a beneficiary or prospective PDW does not complete these actions in a timely manner, the beneficiary cannot be enrolled in the program.

While the beneficiary’s case manager, support broker and DHCF staff are available to assist the beneficiary and his or her prospective PDWs throughout the enrollment process, DHCF cannot compel the beneficiary or prospective PDW to adhere to a prescribed timeframe for completing these actions. Therefore, while DHCF will make every effort to process all enrollment-related documents and authorizations as quickly as possible, the agency is not able to prescribe set timeframes for each stage of the enrollment process, as many stages are dependent on the actions of the beneficiary and prospective PDWs and not under DHCF’s control to meet.

To ensure clarity DHCF has made four (4) clarifying amendments to the final rules as follows: (1) Subsection 10102.5 has been updated to ensure that the list of participant-directed community support services includes a reference back to the District rule governing these services, 29 DCMR § 5006.7; (2) Subsection 10104.5(d) has been updated to clarify the types of entertainment equipment that are considered non-allowable individual-directed goods and services; (3) Subsection 10104.5(v) has been updated to clarify that parking expenses are included within the non-allowable goods and services category of vehicle expenses; and (4) Subsection 10107.2(c) has been updated to clarify that the pre-determined percentage used to develop the PDS budget will be published in the *D.C. Register*.

The Director adopted these rules on September 19, 2017 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**A new Chapter 101, SERVICES MY WAY PROGRAM, is added to Title 29 DCMR, PUBLIC WELFARE, to read as follows:**

**CHAPTER 101 SERVICES MY WAY PROGRAM**

<b>10100</b>	<b>GENERAL PROVISIONS</b>
<b>10101</b>	<b>OUTREACH AND ENROLLMENT</b>
<b>10102</b>	<b>PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES: SERVICE DESCRIPTION</b>
<b>10103</b>	<b>PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES: PROVIDER REQUIREMENTS</b>
<b>10104</b>	<b>INDIVIDUAL-DIRECTED GOODS AND SERVICES: SERVICE DESCRIPTION</b>
<b>10105</b>	<b>INDIVIDUAL-DIRECTED GOODS AND SERVICES: PROVIDER REQUIREMENTS</b>

- 10106 VENDOR FISCAL/EMPLOYER AGENT FINANCIAL MANAGEMENT SERVICES-SUPPORT BROKER ENTITY FUNCTIONS
- 10107 PARTICIPANT-DIRECTED SERVICES BUDGET FORMULATION
- 10108 RECONSIDERATION PROCESS
- 10109 AUTHORIZED REPRESENTATIVES
- 10110 MANDATORY REPORTING
- 10111 VOLUNTARY TERMINATION OF PROGRAM PARTICIPATION
- 10112 INVOLUNTARY TERMINATION OF PROGRAM PARTICIPATION
- 10113 EXPENDITURE SAFEGUARDS
- 10199 DEFINITIONS

**10100 GENERAL PROVISIONS**

10100.1 The *Services My Way* program shall be established as the Medicaid participant-directed services (PDS) program in the District of Columbia to afford persons enrolled in the Home and Community-Based Services Waiver for the Elderly and Persons with Physical Disabilities (EPD Waiver) the opportunity to self-direct certain EPD Waiver services.

10100.2 Participation in the *Services My Way* program shall be limited to beneficiaries enrolled in the EPD Waiver who live in their own private residence or in the home of a family member or friend.

10100.3 If an EPD Waiver beneficiary is deemed ineligible to participate in the *Services My Way* program because of his or her failure to meet the criteria outlined in § 10100.2, Department of Health Care Finance (DHCF) shall issue timely written notice to the beneficiary which includes the following :

- (a) A clear statement that the beneficiary is not eligible to participate in the *Services My Way* program;
- (b) The reason(s) for the decision;
- (c) Citation to regulations supporting the decision; and
- (d) Information on the beneficiary’s right to appeal the decision by filing a notice of appeal with the Office of Administrative Hearings.

10100.4 The *Services My Way* program shall include the following services:

- (a) Participant-directed community support (PDCS) services as described in § 10102; and
- (b) Individual-directed goods and services as described in § 10104.

- 10100.5 PDCS services and individual-directed goods and services shall only be available to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.
- 10100.6 *Services My Way* participants shall be afforded the following self-direction opportunities:
- (a) The opportunity to exercise “employer authority” to recruit, hire, supervise and discharge qualified participant-directed workers (PDWs) who provide PDCS services to them; and
  - (b) The opportunity to exercise “budget authority” to purchase allowable and approved individual-directed goods and services using a participant-directed services (PDS) budget.
- 10100.7 The *Services My Way* participant or the participant’s authorized representative, if designated by the participant, shall serve as a “common law employer” of all PDWs hired by the participant.
- 10100.8 Financial management services and information and assistance services, as set forth in § 10106.4 and § 10106.6, respectively, shall be provided to *Services My Way* participants through the Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services (FMS)-Support Broker entity selected by the Department of Health Care Finance (DHCF) through a competitive procurement process.
- 10100.9 *Services My Way* participants shall not receive agency-based personal care aide services offered under Chapter 42 or Chapter 50 of Title 29 DCMR.
- 10100.10 *Services My Way* participants shall be eligible to receive all services offered under the EPD Waiver except for agency-based personal care aide services.
- 10100.11 *Services My Way* participants shall not serve as PDWs.

## **10101 OUTREACH AND ENROLLMENT**

- 10101.1 Both current EPD Waiver beneficiaries and new EPD Waiver enrollees who meet the requirements of § 10100.2 may elect to enroll in the *Services My Way* program.
- 10101.2 DHCF or its agent shall provide information regarding self-direction and the *Services My Way* program to all current EPD Waiver beneficiaries and to new EPD Waiver enrollees at the time of EPD Waiver enrollment.
- 10101.3 EPD Waiver case managers shall provide information regarding self-direction and the *Services My Way* program to all EPD Waiver beneficiaries who are not enrolled as *Services My Way* participants each time a beneficiary is reassessed for

EPD Waiver services, each time a beneficiary's person-centered plan (PCP) is updated, and upon a beneficiary's request.

- 10101.4 All EPD Waiver case managers shall be required to complete a standardized training course on self-direction and the *Services My Way* program conducted by DHCF prior to the date enrollment begins for the *Services My Way* program, as well as all ongoing training required by DHCF.
- 10101.5 If an EPD Waiver beneficiary expresses interest in the *Services My Way* program, the beneficiary's EPD Waiver case manager shall assist the beneficiary in revising an existing PCP or developing an initial PCP to include the *Services My Way* program.
- 10101.6 Upon revising the existing PCP or developing an initial PCP which includes the *Services My Way* program, the EPD Waiver case manager shall submit the PCP which includes the *Services My Way* program to the *Services My Way* Program Coordinator for approval.
- 10101.7 Enrollment in the *Services My Way* program shall only occur following the *Services My Way* Program Coordinator's approval of the beneficiary's PDS budget as described in § 10107 and issuance of a prior authorization for all PDCS services and individual-directed goods and services included in the approved budget.
- 10101.8 Beneficiaries shall be notified at the time of enrollment in the *Services My Way* program that participation in the program is conditioned upon compliance with all program rules and the terms of the Participant/Representative-Employer Agreement.

**10102 PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES:  
SERVICE DESCRIPTION**

- 10102.1 PDCS services shall be available only to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.
- 10102.2 PDCS services shall be detailed in the participant's PCP and PDS budget and shall be designed to promote independence and ensure the health, welfare, and safety of the participant.
- 10102.3 The participant or his/her authorized representative, as applicable, shall serve as a "common law employer" of the PDW providing services. In the role of "common law employer," the participant or authorized representative shall be responsible for recruiting, hiring, supervising and discharging PDWs providing PDCS services.



- 10102.4 Supports shall be available to assist the participant/representative-employer with his or her own employer-related responsibilities as described in § 10102.3 through the VF/EA FMS-Support Broker entity.
- 10102.5 PDCS services shall include cueing, safety monitoring and hands-on assistance with activities of daily living and instrumental activities of daily living, as set forth in 29 DCMR § 5006.7.
- 10102.6 All PDCS services provided by a PDW shall be prior authorized by DHCF or its agent in order to be reimbursed under the *Services My Way* program.
- 10102.7 To be eligible for PDCS services, a participant shall be in receipt of a service authorization for personal care aide services from DHCF or its designated agent that specifies the amount, duration, and scope of services authorized to be provided to the beneficiary, in accordance with 29 DCMR § 5003.
- 10102.8 Payment for PDCS services shall be provided in accordance with the participant's PDS budget, at an hourly wage set by the participant/representative-employer which falls within the wage range established by DHCF as set forth in § 10102.9.
- 10102.9 The hourly wage paid to a PDW shall be no lower than the living wage in the District, set in accordance with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.*), and no higher than the wage paid by DHCF for services provided by a personal care aide in accordance with Chapter 42 of Title 29 DCMR.
- 10102.10 PDCS services shall not include the following:
- (a) Services that require the skills of a licensed professional, as defined in 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.*); or
  - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the participant, laundry for family members, shopping for items not used by the participant, or money management.
- 10102.11 An agency-based provider of personal care aide services shall not be designated as an emergency back-up provider of PDCS services.
- 10102.12 In order to ensure PDCS services are provided in a manner that ensures the participant's health and safety, if a participant submits a PDS budget in accordance with § 10207 that includes one hundred twelve (112) or more hours of personal care aide services per week as described in 29 DCMR § 5003, PDCS services must be provided by at least two (2) PDWs each week.

**10103 PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES:  
PROVIDER REQUIREMENTS**

- 10103.1 PDCS services shall be provided only to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.
- 10103.2 Qualified PDWs shall provide PDCS services as employees of *Services My Way* participants.
- 10103.3 PDCS services may be provided by family members and individuals other than a participant's spouse, other legally responsible relative, or court-appointed guardian. A legally responsible relative does not include parents of adult children, so parents of adult children are not precluded from providing PDCS services. Each family member providing PDCS services shall comply with the requirements set forth in these rules.
- 10103.4 All PDWs shall meet the following qualifications:
- (a) Be at least eighteen (18) years of age;
  - (b) Complete and pass a criminal background check in accordance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.* (2012 Repl. & 2016 Supp.));
  - (c) Receive customized training provided by the participant and/or the participant's authorized representative that is related to the participant's functional needs and goals as outlined in the PCP;
  - (d) Be able and willing to perform the service-related responsibilities outlined in the participant's PCP; and
  - (e) Be certified in cardiopulmonary resuscitation (CPR) and First Aid through an in-person training course approved by the American Red Cross or an alternative course approved by the *Services My Way* Program Coordinator and maintain current certifications.
- 10103.5 *Services My Way* participants shall not serve as PDWs.
- 10103.6 The VF/EA FMS-Support Broker entity shall be responsible for verifying that criminal background checks are conducted for all prospective PDWs in accordance with § 10103.4(b), and providing participants, authorized representatives, prospective PDWs, and the *Services My Way* Program

Coordinator with the results of all criminal background checks performed on prospective PDWs.

10103.7 The participant, or the participant's authorized representative if designated as the "common law employer" of the PDW, shall verify that a prospective PDW meets all qualifications set forth in § 10103.4 prior to hiring the PDW to provide PDCS services.

10103.8 The VF/EA FMS-Support Broker entity shall verify that a PDW meets all qualifications set forth in § 10103.4 prior to enrolling the PDW into its payroll system.

10103.9 The VF/EA FMS-Support Broker entity shall execute a Medicaid provider agreement with each PDW on behalf of DHCF at the time a PDW is enrolled into its payroll system.

**10104 INDIVIDUAL-DIRECTED GOODS AND SERVICES: SERVICE DESCRIPTION**

10104.1 Individual-directed goods and services are only available to EPD Waiver beneficiaries who are enrolled as participants in the *Services My Way* program, and are purchased from the participant's PDS budget.

10104.2 Individual-directed goods and services are services, equipment or supplies not otherwise provided through the EPD Waiver or the Medicaid State Plan that address an identified need in the participant's PCP, including improving and maintaining the participant's opportunities for full membership in the community. Individual-directed goods and services shall meet the following requirements:

- (a) The requested item or service would decrease the participant's need for other Medicaid services;
- (b) The requested item or service would promote the participant's inclusion in the community; or
- (c) The requested item or service would increase the participant's safety in the home environment.

10104.3 Allowable goods and services shall include, but not be limited to, the following:

- (a) Cleaning services from firms or individuals to clean the participant's personal areas including bedroom, bathroom, kitchen, etc., only if necessary in addition to those services otherwise available through the EPD Waiver;

- (b) Food preparation and delivery services, including grocery delivery and delivery of prepared foods (but not payment for the food itself);
- (c) Transportation services not currently available under Medicaid or the District's accessible transportation programs or through natural supports that are related to activities of daily living, and meet an objective outlined in the participant's PCP;
- (d) Small electric appliances which allow the participant to safely prepare meals;
- (e) Laundry services;
- (f) The cost of changing locks at the participant's home, as necessary, when a PDW stops working for the participant; and
- (g) Maintenance of items that meet the criteria of allowable individual-directed goods described in § 10104.2.

10104.4 Payment for allowable transportation services shall be made in the form of reimbursement for mileage documented on a Mileage Reporting Form provided by DHCF or its agent or reimbursement for public transit costs documented as specified by DHCF or its agent and submitted to the VF/EA FMS-Support Broker entity.

10104.5 Non-allowable goods and services shall include, but not be limited to, the following:

- (a) Gifts for PDWs, family or friends, including bonus payments to PDWs;
- (b) Loans to PDWs, family or friends;
- (c) Food, beverages and nutritional supplements;
- (d) Entertainment equipment or supplies such as televisions, stereos, CDs, DVDs, streaming devices, etc.;
- (e) Air conditioners, heaters, fans and similar items;
- (f) Electronic devices that do not meet the requirements of § 10104.2 and do not meet an objective outlined in the participant's PCP or that are not for the sole use of the participant;
- (g) Illegal drugs;
- (h) Alcoholic beverages or tobacco products;

- (i) Costs associated with advertising for prospective PDWs;
- (j) Costs associated with travel (airfare, lodging, meals, etc.) for vacations or entertainment;
- (k) Utility, rent or mortgage payments;
- (l) Clothing or shoes;
- (m) Comforters, towels, linens or drapes;
- (n) Paint or related supplies;
- (o) Furniture or other household furnishings;
- (p) Cleaning or laundry for other household members or areas of a home that are not used as part of the participant's personal care;
- (q) Large household or kitchen appliances such as washers, dryers, dishwashers, refrigerators, or freezers;
- (r) Exercise equipment;
- (s) Medications, vitamins or herbal supplements;
- (t) Experimental or prohibited treatments;
- (u) Laundry detergent and household cleaning supplies;
- (v) Vehicle expenses, including routine maintenance, repairs, parking or insurance costs;
- (w) Transportation services that are otherwise available under Medicaid or the District's accessible transportation programs or through natural supports or that are not related to activities of daily living;
- (x) Landscaping and yard work;
- (y) Pet care and supplies, except when provided for service animals; and
- (z) Massages, manicures or pedicures.

10104.6 Participants in the *Services My Way* program may purchase individual-directed goods and services that are included in their PCP, meet the requirements of §§ 10104.2 and 10104.3, and are within their PDS budget to purchase.

- 10104.7 Individual-directed goods and services shall be documented in the participant's PDS budget and PCP. The participant's support broker shall assist participants to revise their PDS budgets, as necessary, to account for new, appropriate individual-directed goods and services they would like to purchase. All revisions to a participant's PDS budget to account for new, appropriate individual-directed goods and services shall be accompanied by justification supporting the revision.
- 10104.8 Upon revising a PDS budget to reflect a new individual-directed good or service, the support broker shall submit the revised PDS budget and justification to the *Services My Way* Program Coordinator for approval.
- 10104.9 The *Services My Way* Program Coordinator shall review all requested individual-directed goods and services.
- 10104.10 The VF/EA FMS-Support Broker entity shall only authorize payment of invoices submitted for individual-directed goods and services that are included in the participant's PCP and PDS budget and that have been approved by the *Services My Way* Program Coordinator.

**10105 INDIVIDUAL-DIRECTED GOODS AND SERVICES: PROVIDER REQUIREMENTS**

- 10105.1 Individual-directed goods and services shall be provided only to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.
- 10105.2 All individuals and vendors providing individual-directed goods and services shall meet the following minimum qualifications:
- (a) All individuals providing individual-directed goods and services shall be at least eighteen (18) years of age;
  - (b) All individuals and vendors providing individual-directed goods and services shall be able to demonstrate to the participant that:
    - (1) The individual/vendor has the capacity to perform the requested work;
    - (2) The individual/vendor has the ability to successfully communicate with the participant; and
    - (3) The individual/vendor has all the necessary professional and/or commercial licenses required by federal and District law.
- 10105.3 Individuals and vendors providing non-medical transportation as an individual-directed service shall meet the following additional qualifications:

- (a) The individual/vendor shall have a valid driver's license; and
- (b) The individual/vendor shall have the minimum amounts of property damage liability, third party personal liability, uninsured motorist bodily injury, and uninsured motorist property damage insurance coverage required by the District of Columbia for the type of vehicle used to provide the transportation, in accordance with the Compulsory/No-Fault Motor Vehicle Insurance Act, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code §§ 31-2401 *et seq.*).

10105.4 No individual or vendor shall provide any individual-directed good or service that is not:

- (a) Documented in the participant's PCP and PDS budget; and
- (b) Approved by the *Services My Way* Program Coordinator.

10105.5 All individuals and vendors selected by a participant to provide individual-directed goods or services shall be required to enter into a Medicaid provider agreement with DHCF prior to providing the goods or services. The Medicaid provider agreement shall be executed by the VF/EA FMS-Support Broker entity supporting the *Services My Way* program on behalf of DHCF.

10105.6 The VF/EA FMS-Support Broker entity shall verify that an individual or vendor selected by the participant to provide individual-directed goods and services meets all applicable requirements set forth in §§ 10105.2 and 10105.3 at the time of enrollment into the VF/EA FMS-Support Broker entity's provider payment system and thereafter, as necessary.

**10106 VENDOR FISCAL/EMPLOYER AGENT FINANCIAL MANAGEMENT SERVICES-SUPPORT BROKER ENTITY FUNCTIONS**

10106.1 *Services My Way* participants shall receive financial management services and information and assistance services through the VF/EA FMS-Support Broker entity selected by DHCF through a competitive procurement process.

10106.2 The VF/EA FMS-Support Broker entity shall operate in accordance with 26 USC § 3504 and Rev. Proc. 70-6, as modified by REG-137036 and Rev. Proc. 2013-39, as well as all applicable federal and District labor, citizenship and immigration, and workers compensation requirements.

10106.3 The VF/EA FMS-Support Broker entity shall consist of the following two (2) divisions:

- (a) The Financial Management Services Division; and

- (b) The Support Broker Division.

10106.4 The VF/EA FMS-Support Broker entity's Financial Management Services Division shall provide the following services to *Services My Way* participants:

- (a) Assist participants in verifying citizenship status of prospective PDWs;
- (b) Report PDWs in the District New Hire Reporting System;
- (c) Collect and process timesheets for PDWs;
- (d) Process payroll, withholding, filing and payment of applicable federal and District employment-related taxes and insurance for PDWs;
- (e) Manage the receipt and renewal of workers' compensation insurance policies for participants' PDWs;
- (f) Track and report participant funds, disbursements, and the balance of participant funds;
- (g) Process and pay invoices for individual-directed goods and services outlined in the participant's PCP and approved PDS budget;
- (h) Provide participants with periodic reports of expenditures and the status of their PDS budgets, as described in § 10113.2;
- (i) Provide customer service, including toll-free phone numbers, written translation and oral language services in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.*); and
- (j) Any other services specified in the VF/EA FMS-Support Broker entity contract and accompanying documents.

10106.5 The VF/EA FMS-Support Broker entity's Financial Management Services Division shall execute the following tasks on behalf of DHCF:

- (a) Execute Medicaid provider agreements for PDWs and individual-directed goods and services vendors providing goods or services and maintaining such agreements as authorized under a written agreement with DHCF;
- (b) Process returned PDW payroll checks and returned payments to individual-directed goods and services vendors in accordance with the District Unclaimed Property Law, effective March 5, 1981 (D.C. Law 3-160; D.C. Official Code §§ 41-101 *et seq.*); and



- (c) Any other tasks specified in the VF/EA FMS-Support Broker entity contract and accompanying documents.

10106.6 The VF/EA FMS-Support Broker entity's Support Broker Division shall provide each *Services My Way* participant with a support broker to furnish information and assistance services. Support brokers shall provide the following services to *Services My Way* participants:

- (a) Assist participants in designating an authorized representative, if participants choose to do so;
- (b) Provide initial orientation to participants and authorized representatives, as appropriate, on participating in the *Services My Way* program, including the role and responsibilities of acting as a "common law employer" and the VF/EA FMS-Support Broker entity, the exercise of employer and budget authority, and management of the PDS budget;
- (c) Provide initial and ongoing skills training to participants and authorized representatives, as appropriate, on performing as a common law employer, utilizing financial management and information and assistance services provided by the VF/EA FMS-Support Broker entity, and managing the PDS budget;
- (d) Assist participant/representative-employers in developing, implementing, and revising, as needed, emergency back-up and natural support plans;
- (e) Receive participants' monthly PDS allocation amount from DHCF and assist participants and authorized representatives, as appropriate, in developing initial and revised PDS budgets using allocation amounts;
- (f) Conduct monthly phone calls and quarterly in-home visits with all participants and authorized representatives, as appropriate;
- (g) Communicate with EPD Waiver case managers to address any health and safety concerns identified for participants and ensure that participants are included in such communication; and
- (h) Any other services specified in the VF/EA FMS-Support Broker entity contract and accompanying documents.

## **10107 PARTICIPANT-DIRECTED SERVICES BUDGET FORMULATION**

10107.1 To be eligible for PDCS services, a *Services My Way* participant shall be in receipt of a service authorization for personal care aide services that specifies the

amount, duration, and scope of services authorized to be provided, in accordance with 29 DCMR § 5003.

- 10107.2 A PDS budget shall be developed based on the following methodology:
- (a) The participant's total assessed hours per week for personal care aide services is determined through the assessment process as set forth in 29 DCMR § 5003.3 and converted to hours per month;
  - (b) The total number of personal care aide services hours per month is multiplied by the hourly rate paid by DHCF for personal care aide services; and
  - (c) The total amount computed in (b) above is reduced by a pre-determined percentage that shall be published in the *D.C. Register* providing thirty (30) days advance notice, to reflect the administrative overhead amount included in the hourly rate paid by DHCF for personal care aide services.
- 10107.3 The amount resulting from the calculation described in § 10107.2 shall represent the *Services My Way* participant's monthly PDS allocation amount, which shall be used to compute the participant's PDS budget.
- 10107.4 A PDS budget shall be developed by the participant and authorized representative, as appropriate, with assistance from the participant's support broker.
- 10107.5 A PDS budget shall contain the following two (2) cost components:
- (a) PDCS services; and
  - (b) Individual-directed goods and services.
- 10107.6 Participant/representative-employers shall set the hourly wage rate paid to their PDWs within the wage range established by DHCF as set forth in § 10102.9.
- 10107.7 Funds available for purchase of individual-directed goods and services shall be those funds, if any, remaining in the PDS budget after the amount for PDCS services has been determined.
- 10107.8 Support brokers shall be responsible for explaining the method used to develop the monthly PDS allocation amount to *Services My Way* participants.
- 10107.9 DHCF shall calculate the monthly PDS allocation amount for all *Services My Way* participants.

- 10107.10 DHCF or its agent shall notify all *Services My Way* participants each time PDS allocation amounts are adjusted as a result of a change to the hourly rate paid by DHCF for personal care aide services.
- 10107.11 The participant and the authorized representative, if applicable, shall work with the support broker to develop the participant's PDS budget based on the allocation amount.
- 10107.12 The participant's support broker shall submit the participant's completed PDS budget to the *Services My Way* Program Coordinator for approval within the timeframe established by DHCF.
- 10107.13 The *Services My Way* Program Coordinator shall review all PDCS services and individual-directed goods and services requested in a participant's PDS budget. All PDCS services requested in a PDS budget shall be reviewed in accordance with all relevant provisions of the Fair Labor Standards Act, 29 USC §§ 201 *et seq.*, and attendant regulations.
- 10107.14 If the *Services My Way* Program Coordinator denies any PDCS services or individual-directed good or service requested in a participant's PDS budget, the Program Coordinator shall send written notice of the denial to the participant, authorized representative as appropriate, and the participant's support broker. The notice shall contain information on the reconsideration process, as described in § 10108, and the participant's appeal rights.
- 10107.15 Once a participant's PDS budget is approved by the *Services My Way* Program Coordinator, the Program Coordinator shall provide the approved PDS budget to the VF/EA FMS-Support Broker entity.
- 10107.16 The VF/EA FMS-Support Broker entity shall only release payment for PDCS services and individual-directed goods and services included in the participant's approved PDS budget and for which prior authorizations have been issued.

## **10108 RECONSIDERATION PROCESS**

- 10108.1 If the *Services My Way* Program Coordinator denies any PDCS services or individual-directed good or service requested in a participant's PDS budget, the participant may request reconsideration of the denial in accordance with § 10108.2.
- 10108.2 If the participant wishes to request reconsideration of the denial, the following steps shall occur:
- (a) The participant shall submit a written request for reconsideration to DHCF within twenty-one (21) days of the postmark date on the notice of denial, containing the following elements:

- (1) The reason the participant believes the denial decision should not be upheld; and
  - (2) Any additional information and/or documentation the participant believes is relevant to the reconsideration decision;
- (b) The Director of DHCF or a designee shall issue a reconsideration decision within forty-five (45) days of the date the reconsideration request was received, containing the following elements:
- (1) A clear statement that the PDS budget denial explained in the initial notice has been upheld or overturned on reconsideration;
  - (2) An explanation of the reason(s) the PDS budget denial was upheld or overturned;
  - (3) Citation to regulations supporting the decision;
  - (4) Information regarding the participant's right to appeal the reconsideration decision by filing a notice of appeal with the Office of Administrative Hearings; and
  - (5) An explanation of the circumstances under which the participant's current level of PDCS and individual-directed goods and services will be continued if the participant files a timely notice of appeal with the Office of Administrative Hearings.

10108.3 A *Services My Way* participant shall not be required to request reconsideration of the denial and may appeal the PDS budget denial decision directly by filing a notice of appeal with the Office of Administrative Hearings.

## **10109 AUTHORIZED REPRESENTATIVES**

10109.1 A *Services My Way* participant may designate an authorized representative to exercise employer-related responsibilities in the *Services My Way* program.

10109.2 An authorized representative is an individual who willingly accepts responsibility for performing employer and PDS budget management tasks that a participant is unable to perform without the assistance of a representative.

10109.3 An individual shall execute a Designation of Authorized Representative form in order to be recognized as a *Services My Way* participant's authorized representative.

- 10109.4 A *Services My Way* participant may designate one (1) of the following three (3) types of authorized representative:
- (a) Pre-Determined Representative: A legal guardian or other court-appointed representative in place at the time of the participant's enrollment in the *Services My Way* program;
  - (b) Voluntary Representative: An individual twenty-one (21) years of age or older who is actively engaged in the participant's life and lives in the participant's community; or
  - (c) Mandated Representative: An individual who meets the criteria of (b) above who is designated by the participant if DHCF or its agent determines that the participant requires an authorized representative in order to continue participation in the *Services My Way* program.
- 10109.5 A *Services My Way* participant shall only have one (1) authorized representative at any time.
- 10109.6 No individual shall receive any monetary compensation for acting as an authorized representative for a *Services My Way* participant.
- 10109.7 No individual acting as an authorized representative for a *Services My Way* participant shall serve as a PDW for that participant.
- 10109.8 All authorized representatives shall be responsible for working collaboratively with *Services My Way* participants to ensure that:
- (a) The participant receives all needed PDCS services from qualified PDWs; and
  - (b) PDCS services and individual-directed goods and services are provided in accordance with the participant's PCP and PDS budget.
- 10109.9 *Services My Way* participants may revoke an authorized representative designation at any time by notifying the support broker, who shall assist the participant to complete any required forms.
- 10109.10 DHCF may determine that a participant requires an authorized representative to continue participation in the *Services My Way* program if the participant has demonstrated an inability to self-direct their services after additional counseling, information, training or assistance.
- 10109.11 If DHCF determines that a participant requires an authorized representative to continue participation in the *Services My Way* program in accordance with §

10109.10, DHCF shall issue written notice to the participant, support broker and EPD Waiver case manager which shall:

- (a) Inform the participant that designation of an authorized representative is required in order to continue participation in the *Services My Way* program;
- (b) Detail the reasons that designation of an authorized representative is required;
- (c) Provide instructions on designating an authorized representative; and
- (d) Provide information regarding the participant's right to appeal the determination by filing a notice of appeal with the Office of Administrative Hearings.

#### **10110 MANDATORY REPORTING**

10110.1 All EPD Waiver case managers, authorized representatives, and employees of the VF/EA FMS-Support Broker entity shall be required to report any suspected instance of abuse, neglect, or exploitation of a *Services My Way* participant to DHCF and Adult Protective Services.

#### **10111 VOLUNTARY TERMINATION OF PROGRAM PARTICIPATION**

10111.1 *Services My Way* participants may decide at any time to voluntarily terminate their participation in the *Services My Way* program.

10111.2 A *Services My Way* participant shall indicate the decision to voluntarily terminate participation in the program by completing and submitting any required voluntary termination forms to the *Services My Way* Program Coordinator. The participant's authorized representative and/or support broker shall assist the participant to complete the forms as necessary.

10111.3 Upon receipt of the participant's voluntary termination forms, the *Services My Way* Program Coordinator shall inform the participant's EPD Waiver case manager and support broker of the participant's decision to terminate program participation.

10111.4 EPD Waiver case managers shall be responsible for assisting participants to transition to agency-based personal care aide services. EPD Waiver case managers shall ensure that there is no break in service provision during the transition period and shall coordinate the approval by DHCF or its designee of the request to initiate agency-based personal care aide services.

**10112 INVOLUNTARY TERMINATION OF PROGRAM PARTICIPATION**

- 10112.1 Participant/representative-employers shall be required to comply with all program rules and terms of the Participant/Representative-Employer Agreement and the Participant/Representative-Employer Consent Form executed at the time of enrollment in the *Services My Way* program.
- 10112.2 Non-compliance with program rules or the terms of the Participant/Representative-Employer Agreement or Participant/Representative-Employer Consent Form shall result in referral of the participant to the Remediation, Training and Termination Protocol established by DHCF.
- 10112.3 Non-compliance with the terms of the Participant/Representative-Employer Agreement may be identified by the VF/EA FMS-Support Broker entity, the participant's support broker, the participant's EPD Waiver case manager, or DHCF staff.
- 10112.4 Except in the case of a credible allegation of fraud, theft, or any other criminal behavior, as described in § 10112.11, participant/representative-employers shall be afforded two (2) episodes of non-compliance in each area of employer-related responsibility delineated in the Participant/Representative Employer Agreement during the first twelve (12) months of enrollment in the *Services My Way* program, in order to allow new program participants to become familiar with all employer-related responsibilities. The third episode of non-compliance in a single area of employer-related responsibility during the first twelve (12) months of program enrollment shall result in the participant's termination from the *Services My Way* program and a transition to agency-based personal care aide services.
- 10112.5 After the first twelve (12) months of program enrollment, participant/representative-employers shall be afforded a total of two (2) further episodes of non-compliance, in any area of employer-related responsibility delineated in the Participant/Representative Employer Agreement, for the duration of their enrollment in the *Services My Way* program. The third episode of non-compliance in any area of employer-related responsibility after the first twelve (12) months of program enrollment shall result in the participant's termination from the *Services My Way* program and a transition to agency-based personal care aide services.
- 10112.6 When a participant/representative-employer is found to be out of compliance with the Participant/Representative-Employer Agreement for the first time, the following steps shall occur:
- (a) The *Services My Way* Program Coordinator shall issue a notice of non-compliance to the participant/representative-employer, the support broker, and the EPD Waiver case manager, which shall:

- (1) Identify the issue of non-compliance and request that the issue be corrected, if possible, and not repeated;
  - (2) Detail requirements of the Corrective Action Plan (CAP) the participant shall create to address the issue;
  - (3) Offer training and/or technical assistance;
  - (4) Encourage the participant/representative-employer to direct questions to the support broker regarding the issue of non-compliance, including requesting training, obtaining assistance in preparing the CAP, and designating an authorized representative;
  - (5) Identify consequences of further non-compliance with the Participant/Representative-Employer Agreement; and
  - (6) Provide information on the participant's appeal rights for termination from the program should three (3) episodes of non-compliance occur.
- (b) Within five (5) business days of issuing the notice of non-compliance, the support broker shall contact the participant/representative-employer to discuss the episode of non-compliance;
  - (c) Within five (5) business days of the contact described in (b) above, the participant shall, with the assistance of the authorized representative and/or the support broker, if needed, draft and sign a written CAP regarding the issue of non-compliance; and
  - (d) The support broker shall provide copies of the participant's signed CAP to the participant's EPD Waiver case manager and the VF/EA FMS-Support Broker entity.
- 10112.7 The participant's support broker shall be responsible for monitoring the participant's adherence to the CAP.
- 10112.8 If the participant or authorized representative, as applicable, fails to implement all or a portion of the CAP, this failure shall be considered an episode of non-compliance with the terms of the Participant/Representative-Employer Agreement and shall be reported to the *Services My Way* Program Coordinator.
- 10112.9 If a participant/representative-employer is found to be out of compliance with the Participant/Representative-Employer Agreement a second time, the following steps shall occur:



- (a) The *Services My Way* Program Coordinator shall issue a second notice of non-compliance to the participant/representative-employer, the support broker, and the EPD Waiver case manager, which shall meet all requirements described in § 10112.6(a);
- (b) Within five (5) business days of issuing the notice of non-compliance, the support broker shall contact the participant/representative-employer to discuss the episode of non-compliance;
- (c) Within five (5) business days of the contact described in (b) above, the participant shall, with the assistance of the authorized representative and/or the support broker, if needed, draft and sign a written CAP regarding the issue of non-compliance; and
- (d) The support broker shall provide copies of the participant's signed CAP to the participant's EPD Waiver case manager and the VF/EA FMS-Support Broker entity.

10112.10 If a participant/representative-employer is found to be out of compliance with the Participant/Representative-Employer Agreement a third time, the following steps shall occur:

- (a) The *Services My Way* Program Coordinator shall issue a third notice of non-compliance to the participant, the support broker, and the EPD Waiver case manager, which shall:
  - (1) Identify the three (3) episodes of non-compliance;
  - (2) Clearly state that DHCF is terminating the participant's enrollment in the *Services My Way* program, per notice provided in the first and second notifications of non-compliance;
  - (3) Inform the participant that he/she will be transitioned to agency-based personal care aide services, per notice provided in the first and second notifications of non-compliance; and
  - (4) Provide information regarding the participant's right to appeal the *Services My Way* program termination decision by filing a notice of appeal with the Office of Administrative Hearings;
- (b) The support broker shall provide copies of the termination notice to the participant's EPD Waiver case manager and the VF/EA FMS-Support Broker entity;

- (c) Within five (5) business days of issuing the termination notice, the support broker shall contact the participant/ representative-employer and address the following topics:
  - (1) Reference to the first and second notices of non-compliance and the termination notice;
  - (2) Review of the consequences of three (3) episodes of non-compliance within a twelve (12) month period;
  - (3) Explanation of the process to transition the participant to agency-based personal care aide services; and
  - (4) Explanation of the participant's right to appeal the *Services My Way* program termination decision and the appeal process; and
- (d) Within five (5) business days of the contact described in (c) above, the support broker shall complete all required participant termination forms and submit them to the *Services My Way* Program Coordinator.

10112.11 In the case of a credible allegation of fraud, theft, or any other criminal behavior committed by a *Services My Way* participant, the participant shall not be referred to the remediation, training and termination protocol, and shall not be afforded three (3) episodes of non-compliance. The participant may be terminated from the program immediately upon completion of an investigation by the DHCF Division of Program Integrity substantiating the credible allegation of criminal behavior.

10112.12 If the DHCF Division of Program Integrity receives a credible allegation of fraud, theft, or any other criminal behavior by a *Services My Way* participant, the Division shall complete an investigation of the allegation and issue a report detailing its findings.

10112.13 A credible allegation of fraud, theft or other criminal behavior is an allegation that has been reviewed and verified by DHCF from a source including, but not limited to, the following:

- (a) The VF/EA FMS-Support Broker entity;
- (b) The participant's support broker;
- (c) The participant's EPD Waiver case manager;
- (d) The participant's other EPD Waiver service providers;
- (e) The participant's PDW; or
- (f) DHCF staff.

10112.14 If the report issued in accordance with § 10112.12 finds the allegation to be substantiated, DHCF shall convene an interdisciplinary termination committee to

review the report and determine whether to terminate the participant based on the findings documented in the report.

- 10112.15 If a *Services My Way* participant is terminated from the program based on the determination of the committee described in § 10112.14, the *Services My Way* Program Coordinator shall issue a termination notice to the participant/representative-employer, the support broker, and the waiver case manager, which shall:
- (a) Clearly state that DHCF is terminating the participant's enrollment in the *Services My Way* program due to a substantiated allegation of fraud, theft or other criminal behavior;
  - (b) Explain the allegation, the investigation process, and the findings of the investigation, and include a copy of the investigation report;
  - (c) Explain the process to transition the participant to agency-based personal care aide services, if appropriate;
  - (d) Provide information regarding the participant's right to appeal the *Services My Way* program termination decision by filing a notice of appeal with the Office of Administrative Hearings; and
  - (e) Provide information regarding the circumstances under which the participant's current *Services My Way* program services will be continued if a hearing is requested, as described in § 10211.16.
- 10112.16 If a participant files a notice of appeal with the Office of Administrative Hearings within thirty (30) days of the date on the *Services My Way* program termination notice, the participant shall remain enrolled in the *Services My Way* program and continue to receive PDCS services and individual-directed goods and services included in the participant's approved PDS budget while the participant's appeal is pending.
- 10112.17 EPD Waiver case managers shall be responsible for transitioning participants to agency-based personal care aide services. EPD Waiver case managers shall ensure that there is no break in service provision during the transition period and shall coordinate the approval by DHCF or its designee of the request to initiate agency-based personal care aide services.
- 10112.18 Nothing in this section shall be construed to limit the District's authority to investigate and prosecute a *Services My Way* program participant for criminal acts including but not limited to theft and fraud.

**10113 EXPENDITURE SAFEGUARDS**

10113.1 DHCF shall implement all safeguards described in this section to prevent premature depletion of *Services My Way* participants' PDS budgets and address potential service delivery issues associated with budget underutilization.

10113.2 The Financial Management Services Division of the VF/EA FMS-Support Broker entity shall prepare and issue a monthly PDS budget report to all participant/representative-employers, their support brokers, EPD Waiver case managers, and the *Services My Way* Program Coordinator. The monthly PDS budget report shall include the following elements:

(a) The participant's monthly PDS budget amount, services used, and expenses incurred for both the current month and the year to date; and

(b) The remaining balance of the participant's PDS budget amount.

10113.3 Support brokers shall review the monthly PDS budget report with participant/representative-employers during their monthly phone contact.

10113.4 The Financial Management Services Division of the VF/EA FMS-Support Broker entity shall monitor PDCS services utilization and provide written notice to the participant/representative-employer, the support broker, the EPD Waiver case manager, and the *Services My Way* Program Coordinator of any significant over- or under-utilization of PDCS services.

10113.5 If the Financial Management Services Division of the VF/EA FMS-Support Broker entity discovers significant over-utilization of PDCS services, the participant/representative-employer shall be referred to the Remediation, Training and Termination Protocol described in § 10112.

10113.6 If the Financial Management Services Division of the VF/EA FMS-Support Broker entity discovers significant under-utilization of PDCS services, the support broker shall address the issue with the participant/representative-employer and develop a corrective action plan as necessary to remedy the issue.

**10199 DEFINITIONS**

10199.1

**Activities of Daily Living (ADLs)** - The ability to bathe, transfer, dress, eat and feed oneself, engage in toileting, and maintain bowel and bladder control (continence).

**Authorized Representative** - An individual who willingly accepts responsibility for performing employer and PDS budget management tasks that a participant is unable to perform without the assistance of a representative,

and who has been designated by the participant in writing by executing a Designation of Authorized Representative form.

**Budget Authority** - The authority granted to *Services My Way* program participants and their authorized representatives, as applicable, to develop and manage their own PDS budget with the assistance of the support broker and the approval of the *Services My Way* Program Coordinator. This authority allows participants to set the wage rate for their own participant-directed workers within the range prescribed by DHCF, and to allocate funds in their own PDS budget to individual-directed goods and services.

**Common Law Employer** - A person for whom the services are being performed who has the right to direct and control the actions of the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and the means by which the result is accomplished, and who is responsible for payment of wages and employment taxes to its employees and all federal, state and local government agencies.

**District New Hire Reporting System** - The electronic system in which all District employers are required to enter new employees within twenty (20) days of hire, per 42 USC § 653A.

**Employer Authority** - The authority granted to *Services My Way* program participants and their authorized representatives, as applicable, to recruit, hire, supervise, and discharge their own qualified participant-directed workers who provide participant-directed community support services to program participants, with the assistance of the VF/EA FMS-Support Broker entity.

**Fraud** - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person, including any act that constitutes fraud under federal or District law.

**Instrumental Activities of Daily Living (IADLs)** - The ability to perform activities not necessary for day-to-day functioning, but which allow an individual to live independently in the community, such as telephone use and medication administration.

**Participant-Directed Worker** - An individual meeting the qualifications set forth in § 10103 who is hired by the participant/representative employer to provide PDCS services.

**Participant/Representative-Employer** - The *Services My Way* participant or the participant's authorized representative, as applicable, who performs employer-related duties including recruiting, hiring, supervising and discharging participant-directed workers.

**Person-Centered Plan** - An individualized service plan developed by the EPD Waiver case manager that identifies the supports and services to be provided to the person enrolled in the EPD Waiver and the evaluation of the person's progress on an ongoing basis to assure that the person's needs and desired outcomes are being met.

**Self-Direction** - The ability of program participants, or their representatives if applicable, to exercise decision-making authority over certain services and take direct responsibility to manage their services with the assistance of a system of available supports.

**Support Broker** - An employee of the VF/EA FMS-Support Broker entity who provides information and assistance services to *Services My Way* participants to enable participants and authorized representatives, as appropriate, to independently direct and manage their participant-directed services.

**Theft** - To wrongfully obtain or use the property of another with intent to deprive the other of a right to the property or a benefit of the property or to appropriate the property to an individual's own use or to the use of a third person.

**Vendor** - A corporate entity providing individual-directed goods or services.

**Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services (FMS)-Support Broker Entity** - An entity operating in accordance with 26 USC § 3504 and Rev. Proc. 70-6, as modified by REG-137036 and Rev. Proc. 2013-39, which provides financial management services and information and assistance services to *Services My Way* participants and their authorized representatives, as appropriate.

**Wrongfully Obtain or Use** - Taking or exercising control over property; making an unauthorized use, disposition, or transfer of an interest in or possession of property; or obtaining property by trick, false pretense, false token, tampering, or deception. The term "wrongfully obtain or use" includes conduct previously known in the District as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption the following amendments to Chapter 93 (Home Health Aides) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

These regulations are authorized by Section 2(f) of the Practice of Nursing Amendment Act of 2009, effective July 7, 2009 (D.C. Law 18-18; D.C. Official Code § 3-1209.07(b) (2016 Repl.)).

The purpose of this Proposed Rulemaking is to make some of the language in Chapter 93 "Home Health Aides" congruent with the language in Chapter 94 (Dialysis Technicians), Chapter 95 (Medication Aides), Chapter 96 (Certified Nurse Assistants), and Chapter 97 (Patient Care Technician). In addition, at the request of the Department of Health Care Finance, the Board of Nursing is delineating the tasks that can be performed by "personal care aides."

A Notice of Proposed Rulemaking was published on April 15, 2016 at 63 DCR 005749 in the *D.C. Register*.

In response to the publication, Disabilities Rights DC at University Legal Services (ULS) offered the following: "We recommend adding to Subsection 9315.1 '(n) Assisting with money management.'" After considering the comment, the Board voted not to add the language requested.

The Board of Nursing (Board) noted that it had previously removed "money management" as a task at the request of the District of Columbia Department of Health Care Finance and in compliance with the Centers for Medicare & Medicaid Services requirements.

ULS also opined that the list of permitted tasks that personal care aides (PCA) and home health aides (HHA), the definition of which encompasses [tasks] PCAs, may perform remains unduly restrictive. The revisions to Section 9315 (Home Health Aide Tasks) do not explicitly include administration of medication via injection, G-tube, and other routes and methods commonly required by people with disabilities. This is important in order to address the basic and routine needs of people with diabetes and G-tubes.

In response, the Board decided not to revise the language. Home health aide regulations specify tasks all HHAs are allowed to perform. In most instances, HHAs are not required to administer medications. Administration of medication requires specific training, not training provided to all HHAs who may or may not be required to administer medications. HHAs may administer medications, provided that the HHA is certified as a medication aide. Certification ensures a level of competence in the administration of medication. Prior to certification, persons must satisfactorily complete a standardized course of training and pass a certification examination.

ULS also recommended changing the language in Subsection 9315.2(h) to read “Administering medications, provided that the HHA is certified as a medication aide pursuant to delegation.”

The Board decided not to revise the language. It noted that delegation is not a task that a nurse can transfer to an untrained aide. They can only delegate to an aide certified to administer medications. Certification requires the satisfactory completion of a course of study and passing a competency examination offered by a certifying body.

ULS also proposed expanding Subsection 9315.2 to allow home health aides to administer but not be limited to administering: PRN medications; physician ordered oral, ophthalmic, topical, otic, nasal, vaginal, and rectal medications and medications by gastric (“G” or “J”) tube; insulin via syringe, insulin pen, or insulin pump; emergency medications, including emergency injections of epinephrine and glucagon; medication via metered dose inhaler or nebulizer; medication via tubes; and conduct finger stick blood glucose testing and record the results.

The Board decided not to revise the language. Home health aides certified as medication aides will be able to perform the tasks specified as well as administer PRN medications.

ULS also suggested allowing home health aides to administer treatment for skin conditions, including decubitus ulcers.

The Board decided not to revise the language. The Board opined that a PCA/HHA should not be allowed to care for decubitus ulcers due to the need for assessment of the decubitus and possible complications.

ULS noted that Subsection 9327.1 (of Section 9327 (Home Health Aide Training Program Curriculum)) requires that HHA training programs use a home health aide model curriculum which is not cited or appended to the proposed regulations. The training program curriculum must include a section to make clear that HHAs must ensure the confidentiality of beneficiaries’ health and other information pursuant to the Health Insurance Portability and Accountability Act (HIPAA). In addition, the training curriculum must include instruction about beneficiaries’ rights to make decisions for themselves, and HHAs must honor their care and other personal preferences, without the involvement of their family members or others. ULS recommended that the training curriculum include foundations for working with home care participants, including family dynamics and communication with the participant, and, only at the participant’s express request, his or her family, and significant others in the home.

The Board decided not to revise the language. The home health aide training program curriculum was not included in the regulations to facilitate future adjustments to the curriculum without requiring an amendment to the regulations. The HHA training programs have used the model curriculum for over three (3) years. The information included in Subsection 9327.1 provides that core training requirements include: client rights; legal and ethical duties, including recognition, prevention and reporting of abuse or neglect; care sensitive to culture, religion, national origin, gender identity, and sexual orientation; and interpersonal communication. The



curriculum includes promotion of client's rights, working with the client and families, and HIPAA.

As no changes have been made to this rulemaking, it was adopted as final on February 6, 2017 and will become effective upon publication in the *D.C. Register*.

**Chapter 93, HOME HEALTH AIDES, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 9300, GENERAL PROVISIONS, is amended as follows:**

**Subsection 9300.1 is amended as follows:**

9300.1 This chapter applies to applicants for, and holders of, a certification to practice as a home health aide (HHA) in the District of Columbia.

**Section 9301, CERTIFICATION, is amended as follows:**

**Subsection 9301.1 is amended as follows:**

9301.1 A certification issued pursuant to this chapter shall expire at 11:59 p.m. on October 31 of each odd-numbered year.

**Section 9304, CERTIFICATION REQUIREMENTS; APPLICATION FOR CERTIFICATION, is amended as follows:**

**Subsection 9304.1 is amended as follows:**

- 9304.1 A person applying for certification as a home health aide shall:
- (a) Be at least eighteen (18) years of age;
  - (b) Either:
    - (1) Be licensed as a District of Columbia registered nurse or practical registered nurse; or
    - (2) Submit evidence of having successfully completed a Board approved certification examination;
  - (c) Meet the requirements of § 9303; and
  - (d) Submit a completed application and application fee.

**Subsection 9304.2 is amended as follows:**

9304.2 An application that remains incomplete for ninety (90) days or more from the date of submission shall be considered abandoned and closed by the Board. The applicant shall thereafter be required to reapply, comply with the current requirements for certification, and pay the required fees.

**Section 9305, CERTIFICATION BY EXAMINATION, is amended as follows:**

**Subsection 9305.1 is amended as follows:**

**9305.1** To qualify for certification by examination, an applicant shall provide proof of one (1) of the following:

- (a) Successful completion of a home health aide training program or bridge to home health aide training program, within the past twenty-four (24) months, approved by the Board of Nursing (Board) or by a nursing board in the United States with standards determined by the Board to be substantially equivalent to the standards in the District of Columbia;
- (b) Completion of a practical nursing or registered nursing “Fundamentals of Nursing” course with a clinical component in the United States, within the last thirty-six (36) months from the date of an application for certification; or
- (c) A Commission on Graduates of Foreign Nursing Schools certificate, received within the last thirty-six (36) months from the date of an application for certification, indicating education as a registered nurse (RN) or licensed practical nurse (LPN) outside the United States.

**Subsection 9305.2 is amended as follows:**

9305.2 To request special accommodations for an examination, an applicant shall submit in writing, the following information:

- (a) A letter from the appropriate health professional that confirms the disability and provides information describing the accommodations required; and
- (b) A letter from the candidate’s education program, indicating what accommodations were granted by the program.

**Subsection 9305.3 is amended as follows:**

9305.3 If an applicant has not taken or passed the home health aide certification examination for more than twenty-four (24) months after the date the applicant becomes eligible to apply to take the examination, the applicant shall comply with the requirements set forth in § 9305.1(a).

**Section 9306, CERTIFICATION BY ENDORSEMENT, is amended as follows:****Subsection 9306.1 is amended as follows:**

- 9306.1 An applicant for endorsement as an HHA shall provide proof of the following:
- (a) Current registration or certification as an HHA or similar title and duties in another jurisdiction;
  - (b) Verification from a current employer certifying the applicant's ability to perform skills listed in § 9315.1;
  - (c) That the applicant has worked as an HHA for at least five hundred (500) hours; and
  - (d) Completion of the requirements as listed in § 9304.

**Section 9307, RENEWAL OF CERTIFICATION, is amended as follows:****Subsection 9307.1 is amended as follows:**

- 9307.1 An applicant for renewal shall have:
- (a) Completed at least twelve (12) hours of continuing education or in-service each year for a total of twenty-four (24) hours each renewal period, including a minimum of three (3) hours of in-service or continuing education on HIV/AIDS, two (2) hours of continuing education in cultural competency or specialized clinical training on clients who identify as LGBTQ, or any Board mandated topics. Training shall be in the area of health or nursing needs of assigned patient population;
  - (b) Provided evidence of the performance of a minimum of eight (8) hours of nursing related services for compensation during the prior twenty four (24) months; and
  - (c) Completed a criminal background check (CBC) as required.

**Section 9308, INACTIVE STATUS; REACTIVATION OF CERTIFICATION, is amended as follows:****Subsection 9308.2 is amended as follows:**

- 9308.2 While on inactive status, the individual shall not be subject to the renewal fee and shall not practice, attempt to practice, or offer to practice as an HHA in the District of Columbia.

**Subsection 9308.3 is amended as follows:**

- 9308.3 To reactivate an inactive status, an individual shall:
- (a) Apply to the Board for reactivation of the certification;
  - (b) Provide evidence of having completed twenty-four (24) hours of in-service training or continuing education within the past two (2) years prior to submission of an application;
  - (c) Provide evidence of current HHA certification or registration in another jurisdiction; and
  - (d) Provide evidence of having provided nursing services a minimum of eight (8) hours within the past two (2) years prior to submission of an application.

**Section 9309, REINSTATEMENT OF EXPIRED CERTIFICATION, is amended as follows:****Subsection 9309.1 is amended as follows:**

- 9309.1 If a home health aide fails to renew his or her certification, the Board shall reinstate the certification if the applicant:
- (a) Applies to the Board for reinstatement of the certification within five (5) years after the certification expires;
  - (b) Provides evidence of having completed twenty-four (24) hours of in service training or continuing education hours within the past two (2) years prior to submission of an application; and
  - (c) Provides evidence of having worked for at least a minimum of eight (8) hours within the last twenty-four (24) months as an HHA under the supervision of a RN or other licensed health professional.

**Subsection 9309.2 is amended as follows:**

- 9309.2 If an HHA fails to apply for reinstatement within five (5) years after his or her certification expires, the applicant shall meet the requirements for certification pursuant to § 9304.

**Section 9310, TEMPORARY CERTIFICATION FOR PURPOSES OF ENDORSEMENT OR REINSTATEMENT, is repealed.**

**Section 9311, PERFORMANCE REVIEWS; CONTINUING EDUCATION OR IN-SERVICE, is repealed.**

**Section 9313, ASSIGNMENT AND DELEGATION OF NURSING CARE TASKS TO HOME HEALTH AIDES, is amended as follows:**

**Subsection 9313.1 is amended to read as follows:**

9313.1 A licensed nurse or authorized health care professional may assign or delegate tasks to HHAs that are among the authorized tasks listed in § 9315.

**Subsection 9313.2 is amended to read as follows:**

9313.2 HHAs shall not practice independently but shall work under the supervision of a licensed nurse or other licensed health care professional.

**Subsection 9313.3 is amended to read as follows:**

9313.3 The delegation or assignment shall comply with the standards for delegation listed in 17 DCMR § 5415. Nursing care tasks that may be delegated shall be determined by:

- (a) The knowledge and skills of the HHA;
- (b) Verification of the clinical competence of the HHA by the employing agency;
- (c) The stability of the client’s condition, including factors such as predictability, absence of risk of complication, and rate of change in health status; and
- (d) The variables in each health care setting which include, but are not limited to:
  - (1) The accessible resources and established policies, procedures, practices and channels of communication that lend support to the type of nursing tasks being delegated to the home health aide;
  - (2) The complexity and frequency of care needed by a given client population; and
  - (3) The accessibility of a licensed nurse or other license health care professional.

**Section 9315, HOME HEALTH AIDE TASKS, is amended as follows:**

The section heading for 9315 is amended to read as follows:

**9315 HOME HEALTH AIDE AND PERSONAL CARE AIDE TASKS**

Subsection 9315.1 is amended to read as follows:

- 9315.1 Under the supervision of a licensed nurse or other authorized licensed health care professional, when employed as a personal care aide (PCA), a person may perform the following tasks:
- (a) Cueing or hands-on assistance with performance of routine activities of daily living (such as, bathing, transferring, toileting, dressing, feeding, and maintaining bowel and bladder control);
  - (b) Shop for items that are related to a patient's nutritional status in accordance with dietary guidelines and other health needs;
  - (c) Assisting with telephone use;
  - (d) Preparing meals in accordance with dietary guidelines, and assisting with eating;
  - (e) Assisting with tasks related to keeping the patient's living area in a condition that promotes the patient's health and comfort;
  - (f) Assisting the patient with ambulation and range of motion exercise as prescribed;
  - (g) Assisting the patient with self-administration of medication;
  - (h) Reading and recording temperature, pulse, and respiration;
  - (i) Measuring and recording blood pressure, height and weight;
  - (j) Observing, recording, and reporting the patient's physical condition, behavior, or appearance;
  - (k) Implementing universal precautions to ensure infection control;
  - (l) Accompanying the patient to medical and medically-related appointments, to the patient's place of employment, and recreational activities if approved in the patient's plan of care; and
  - (m) Assisting with incontinence, including bed pan use, changing urinary drainage bags, protective underwear, and monitoring urine input and output.

**A new Subsection 9315.2 is added to read as follows:**

- 9315.2 In addition to the tasks specified in § 9315.1, under the supervision of a licensed nurse or health care professional, when employed as an HHA, a person may perform the following tasks:
- (a) Changing simple dressings that do not require the skills of a licensed nurse;
  - (b) Assisting the patient with activities that are directly supportive of skilled therapy services;
  - (c) Assisting with routine care of prosthetic and orthotic devices;
  - (d) Emptying and changing colostomy bags and performing care of the stoma;
  - (e) Cleaning around a g-tube site;
  - (f) Administering an enema;
  - (g) Administering oxygen therapy; and
  - (h) Administering medications, provided that the HHA is certified as a medication aide.

**Section 9317, DISCIPLINE, is amended as follows:****Subsection 9317.3 is amended to read as follows:**

- 9317.3 Grounds for denial, suspension, revocation or other discipline of a home health aide include the inability to function with reasonable skill and safety for the following reasons and for any additional acts as specified in D.C. Official Code § 3-1205.14:
- (a) Substance abuse or other chemical dependency;
  - (b) Client abandonment;
  - (c) Fraud or deceit, which may include but is not limited to:
    - (1) Filing false credentials;
    - (2) Falsely representing facts on an application for initial certification, reinstatement or renewal; or

- (3) Giving or receiving assistance in taking the competency evaluation.
- (d) Client neglect, abuse or misappropriation of funds;
- (e) Boundary violations;
- (f) Unsafe client care;
- (g) Performing acts beyond the HHA range of functions or beyond those delegated;
- (h) Misappropriating or misusing property;
- (i) A criminal conviction;
- (j) Failing to conform to acceptable standards of practice as an HHA;
- (k) Putting clients at risk of harm; or
- (l) Violating the privacy or failing to maintain the confidentiality of client information.

**Subsection 9317.4 is amended to read as follows:**

9317.4 The Board shall maintain and make available all public disciplinary actions.

**Subsection 9317.5 is amended to read as follows:**

9317.5 A home health aide who is unable to perform his or her duties due to drug or alcohol dependency or mental illness may use the services offered under the Nurse's Rehabilitation Program pursuant to D.C. Official Code §§ 3-12051.01, *et seq.* (2012 Repl.).

**Add a new Subsection 9317.6 to read as follows:**

9317.6 The Board may refer for criminal prosecution any violation of the Health Occupations Revision Act, D.C. Official Code §§ 3-1201.01, *et seq.* (2012 Repl. & 2015 Supp.) that it deems appropriate.

**Section 9320, STANDARDS FOR HOME HEALTH AIDE TRAINING PROGRAMS, is amended as follows:**

**Subsection 9320.3 is amended to read as follows:**



- 9320.3 The Board shall consider any one (1) of the following as an adverse action which would preclude a health care facility from providing HHA training:
- (a) The termination, restriction, or revocation of a facility’s participation in the Medicare or Medicaid program;
  - (b) Provisional or restricted licensure of the facility, provided it is not a new facility; or
  - (c) If a facility has a provider agreement of less than one (1) year.

**Section 9321, SUPERVISED PRACTICE OF HOME HEALTH AIDE TRAINEES, is amended as follows:**

**Subsection 9321.2 is amended to read as follows:**

9321.2 A trainee who is fulfilling educational requirements under this chapter may engage in supervised practice without a District of Columbia certification.

**Subsection 9321.3 is amended to read as follows:**

9321.3 All supervised practice of a trainee shall take place under the general or immediate supervision of a licensed nurse.

**Section 9324, HOME HEALTH AIDE PROGRAM APPROVAL PROCEDURES, is amended as follows:**

**Subsections 9324.1 – 9324.5 are amended to read as follows:**

- 9324.1 Each institution applying for approval to provide HHA training shall do the following:
- (a) At least ninety (90) days in advance of the scheduled starting date, submit to the Board a statement of intent to establish an HHA training program;
  - (b) Submit an application for approval which contains the following information:
    - (1) A statement of purpose;
    - (2) A statement of need for the training program in the District of Columbia;
    - (3) A description of the proposed program’s potential effect on existing home health aide training programs in the area;

- (4) The organizational structure of the institution showing the relationship of the proposed training program within the organization;
- (5) Evidence of adequate financial resources for planning, implementation, and continuation of the program;
- (6) Licensure status of the proposed training facility;
- (7) The backgrounds and qualifications of the proposed instructors;
- (8) The number of full time equivalent (FTE) budgeted instructor positions;
- (9) Evidence of the availability of adequate clinical facilities;
- (10) A description of the anticipated trainee population, including the admission criteria, health requirements, copy of entrance examination, and graduation criteria;
- (11) A tentative time schedule for planning and initiating the program; and
- (12) Fee schedules.

(c) Submit the one thousand dollar (\$1,000) application fee.

9324.2 Schools currently non-compliant with the Board’s regulatory requirements for existing programs are not eligible to submit an application to establish an additional program.

9324.3 After reviewing the application, based on the applicant’s compliance with § 9327, a decision shall be made to:

- (a) Approve the program;
- (b) Defer approval if additional information is needed; or
- (c) Deny approval of the program.

9324.4 If an application approval has been granted, the applicant shall attend a Board sponsored orientation and a site visit shall be conducted.

9324.5 After reviewing the site visit report and an applicant’s compliance with § 9332, the Board shall vote to approve, deny, or defer program approval for resource, facility, or service concerns.

**A new Subsection 9324.6 is added to read as follows:**

9324.6 After receiving program approval, the applicant shall attend a Board sponsored orientation. A training program shall not admit trainees to the program before successful completion of the orientation.

**A new Subsection 9324.7 is added to read as follows:**

9324.7 If the application is denied, the applicant may not resubmit an application until one (1) year has passed from the last submission.

**Section 9325, PERIODIC REVIEW OF APPROVED PROGRAMS, is amended as follows:****Subsection 9325.1 is amended to read as follows:**

9325.1 Programs approved by the Board to train HHAs shall submit to the Board an annual report and pay the fee in accordance with procedures set out by the Board.

**Subsection 9325.3 is amended to read as follows:**

9325.3 The Board may make unannounced visits to review and assess each HHA training program to ensure that the program is in compliance with §§ 9327, 9328, 9331, and 9332.

**Subsection 9325.5 is amended to read as follows:**

9325.5 The program shall meet the seventy-five percent (75%) passing rate on the District's competency evaluation each year.

**Subsection 9325.6 is amended to read as follows:**

9325.6 The training program deficiencies sufficient to warrant withdrawal of approval shall include, but not be limited to the following:

- (a) Failure to effectively utilize the District's approved curriculum for the training program;
- (b) Failure to maintain an adequate number of instructors with required qualifications;
- (c) Failure to meet the seventy five percent (75%) passing rate on the District's approved competency evaluation for a period of two (2) consecutive years;

- (d) Failure of trainees to demonstrate minimal competencies upon employment;
- (e) Failure to adhere to training program’s stated objectives and policies;
- (f) Failure to maintain adequate resources, facilities, and services required to meet training objectives; and
- (g) Failure to correct other deficiencies outlined by the Board.

**Subsection 9325.7 is amended to read as follows:**

9325.7 If the training program does not meet the requirements for continued approval:

- (a) The Board may grant conditional approval not to exceed one (1) year, pending correction of the deficiencies; and
- (b) The Board may restrict the admission of trainees to programs in conditional status.

**Subsection 9325.8 is amended to read as follows:**

9325.8 The Board shall withdraw approval of a training program if:

- (a) It determines that the program is not in compliance with the regulatory requirements set forth in this chapter;
- (b) The education institution loses its licensure; or
- (b) The program fails to correct the deficiencies within the time frame specified by the Board.

**Section 9327, HOME HEALTH AIDE TRAINING PROGRAM CURRICULUM, is amended as follows:**

**The section heading for 9327 is amended to read as follows:**

**9327 HOME HEALTH AIDE TRAINING PROGRAM REQUIREMENTS**

**Subsection 9327.1 is amended to read as follows:**

9327.1 Training programs shall use the Board approved home health aide model curriculum, as it may be amended from time to time.

**Subsection 9327.2 is repealed.**

**Subsections 9327.3 – 9327.11 are amended to read as follows:**

- 9327.3 The training program shall be coordinated by a registered nurse who:
- (a) Has a current, unencumbered license issued by the District of Columbia;
  - (b) Has at least two (2) years of fulltime or fulltime equivalent experience as a licensed nurse with at least one (1) year of clinical experience in a home setting; and
  - (c) Has not been disciplined by the Board pursuant to D.C. Official Code § 3-1205.14 (2012 Repl.).
- 9327.4 The HHA program coordinator shall be a qualified registered nurse with institutional authority and administrative responsibility for the program.
- 9327.5 The program coordinator's supervision and responsibility shall include, but not be limited to:
- (a) Ensuring that the curriculum is coordinated and implemented in accordance with this chapter;
  - (b) Establishing the responsibilities of the instructors;
  - (c) Ensuring that each instructor meets the qualifications specified in this chapter;
  - (d) Ensuring that each student is properly supervised during the student's clinical experience;
  - (e) Ensuring that each clinical preceptor provides the evaluation of the student's performance to the clinical instructor; and
  - (f) Reporting annually and responding upon request to the Board.
- 9327.6 The clinical preceptor shall have the following minimum qualifications:
- (a) Be currently licensed or registered in good standing in the jurisdiction in which he or she is providing the preceptorship; and
  - (b) Have a minimum of two (2) years of experience providing direct patient care during the five (5) years immediately preceding the date of the written agreement.
- 9327.7 The ratio of preceptor to trainees in clinical areas involving direct care of clients shall not exceed one (1) instructor or preceptor to two (2) HHAs.

- 9327.8 Each instructor shall have the following minimum qualifications:
- (a) Be licensed or certified in his or her profession in the District of Columbia;
  - (b) Have completed a course in teaching adults or have experience in teaching adults and supervising home health aides; and
  - (c) Be licensed as a nurse in the District of Columbia and have a minimum of three (3) years of current clinical experience in the home or residential settings.
- 9237.9 The ratio of clinical instructors to trainees in clinical areas involving direct care of clients shall not exceed one (1) instructor to eight (8) trainees.
- 9327.10 Each training program shall have a record or attestation that trainees received information on the policies governing admission, retention, dismissal, and the course requirements of the training program, in writing.
- 9327.11 Each training program shall have records of vaccinations of applicants for communicable diseases, prior to admission.

**Subsections 9327.12 - 9327.19 are repealed.**

**Section 9328, MINIMUM QUALIFICATIONS FOR HOME HEALTH AIDE TRAINEES, is amended to read as follows:**

- 9328.1 Each trainee shall be required to take a Board-approved pre-admission examination to assess reading, writing, and math skills prior to enrollment in a training program.
- 9328.2 Each trainee shall be required to provide evidence of vaccinations or immunity to communicable diseases prior to admission.
- 9328.3 Each trainee shall attest in writing to receiving information on:
- (a) The policies governing admission, retention, dismissal, and the course requirements of the training program, in writing; and
  - (b) Certification requirements including CBC and examination.

**Section 9330, CLOSING OF EDUCATION AND TRAINING PROGRAMS, is amended as follows:**

**Subsection 9330.1 is amended to read as follows:**

- 9330.1 Each HHA program that voluntarily closes shall:
- (a) As early as reasonably possible, notify the Board, in writing, of the intended closing, stating the reason(s) for and planned date of the intended closing;
  - (b) Continue the training program until the committed class scheduled for currently enrolled trainees is completed; and
  - (c) Notify the Board of the final closing date at least thirty (30) days before the final closing.

**Subsection 9330.2 is amended to read as follows:**

- 9330.2 Before the Board may withdraw approval of a program, the Board shall:
- (a) Issue a notice of intended action to the program notifying the program that:
    - (1) The Board intends to withdraw approval of the program and the reasons for the action; and
    - (2) The program has a right to a hearing.
  - (b) Send notice to the Education Licensure Commission of the Board's intention to withdraw program approval.

**A new Subsection 9330.3 is added to read as follows:**

- 9330.3 If the Board denies or withdraws approval of a training program, the institution shall:
- (a) Close the program on the date provided by the Board; and
  - (b) Comply with the requirements of all applicable rules and notify the Board that the requirements have been fulfilled.

**Section 9331, RECORDS RETENTION, is amended as follows:**

**Subsection 9331.3 is amended to read as follows:**

- 9331.3 A record for each trainee shall be maintained by the facility and shall include the trainee's evaluation and health information, and items set forth in § 9328.

**Subsection 9331.4 is amended to read as follows:**

9331.4 Each instructor's personnel records shall be maintained by the facility and shall include application data, qualifications, and position description.

**Subsection 9331.5 is amended to read as follows:**

9331.5 All records shall be maintained by the HHA training program for a minimum of five (5) years.

**Section 9332, RESOURCES, FACILITIES, AND SERVICES, is amended as follows:**

**Subsection 9332.2 is amended to read as follows:**

9332.2 Each classroom, conference room, laboratory, and office shall be adequate to meet the needs of the training program.

**Subsection 9332.3 is amended to read as follows:**

9332.3 Each cooperative agreement between a training program and a healthcare facility shall be in writing. The training program shall maintain a copy of the agreement in its records.

**Section 9399, DEFINITIONS, is amended as follows:**

**Subsection 9399.1 is amended by adding the following definitions:**

**Cueing** – means using verbal prompts in the form of instruction or reminders to assist persons with ADLs and IADLs.

**Delegation** – means the transference from the licensed nurse to another individual within the scope of his or her practice, the authority to act on behalf of the licensed nurse in the performance of a nursing intervention, while the licensed nurse retains accountability and responsibility for the delegated act.

**Department** – means the Department of Health.

**Health care facility** – means an assisted living residence (ALR), homes for persons with physical or intellectual disabilities, skilled home care agencies, and those that provide long-term and acute care health services.

**Institutional authority** – means the right or power given by the school or organization offering the training, to the nurse coordinator to control, command, and make decisions regarding the specified training program.

**Licensed practitioner** – means an individual licensed to practice a health occupation in the District of Columbia.



**Misappropriation** – the application of another’s property or money dishonestly to one’s own use.

**Nursing assistive personnel** – means an individual other than a licensed nurse, who has received appropriate training or instruction to function in a complementary or assistant role to a licensed nurse, in providing direct patient care or in carry out common nursing tasks. The term includes, but is not limited to, nursing students, graduate nurses, home health aides, personal care aides, medication aides, certified nurse assistants, patient care technicians, or others as specified by the Board of Nursing.

**Pass rate** – means the percentage of candidates who received a passing score on the competency evaluation out of the total exams administered for the review period.

**Personal care aide** – means an individual certified as a home health aide, who, as a result of training and demonstrated competencies, works under the supervision of a nurse or other health professional licensed in the District of Columbia and provides personal care services as specified in § 9315.1.

**Program** – means the planned series of instruction, didactic and clinical, designed so that the student will acquire the requisite knowledge and skills.

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Directors (Board) of the District of Columbia Water and Sewer Authority (DC Water), pursuant to the authority set forth in Sections 203(3) and (11) and 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code §§ 34-2202.03(3) and (11) and § 34-2202.16 (2012 Repl.)); and Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2016 Repl.)); hereby gives notice that, at its regularly scheduled meeting on September 7, 2017, the Board adopted Board Resolution #17-52 to amend Chapter 1 (Water Supply) and Chapter 41 (Retail Water and Sewer Rates) of the District of Columbia Municipal Regulations (DCMR).

The purpose of these amendments are to: amend the Water System Replacement Fee (WSRF) regulations to add the rules and procedures for a Multi-Family WSRF adjustment; amend the Customer Classifications to clarify the definitions for Residential, Multi-Family and Non-Residential customers to include cooperative housing associations and other clarifications; and amend the definitions set forth in Chapter 41 to define the terms Condominium, Cooperative Housing Association, and Dwelling Unit used in the Customer Classification regulations.

Pursuant to Board Resolution #17-41, dated June 1, 2017, DC Water's proposed rulemaking was published in the *D.C. Register* (DCR) at 64 DCR 5696 on June 16, 2017. On July 25, 2017, the DC Retail Water and Sewer Rates Committee met to consider the comments offered during the public comment period and recommendations from the DC Water General Manager.

On September 7, 2017, the Board, through Resolution #17-52, after consideration of all comments received and the report of the Retail Water and Sewer Rates Committee, voted to amend the DCMR to revise the WSRF, Customer Classifications, and definitions as discussed above. No changes were made to the proposed regulations.

These rules were adopted as final on September 7, 2017 by resolution. This final rulemaking will become effective on October 1, 2017.

**Chapter 1, WATER SUPPLY, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:**

**Section 112, FEES, Subsection 112.10, is amended by adding a new Paragraph 112.10(c) to read as follows:**

- (c) A Multi-Family WSRF adjustment will be provided in accordance with the following rules and procedures:
  - (1) A Multi-Family customer that is a cooperative housing association, and whose premises is comprised exclusively of single family attached or detached dwelling structures and served by a master

meter, may request a Multi-Family WSRF adjustment to modify the combined domestic meter size based on the peak domestic water demand, excluding fire demand, for that premises.

- (2) The eligible Multi-Family customer must submit the following information and fees to DC Water for review and processing:
  - (A) Record(s) demonstrating that each unit in the cooperative housing association is a single-family attached or detached dwelling unit;
  - (B) A site plan, prepared by a District of Columbia licensed professional engineer, architect, or master plumber or other licensed professional, drawn to scale showing the water distribution and service lines, location of the meter, fire hydrant(s), structures, and ancillary systems, including, but not limited to irrigation system(s), swimming pool(s) and fountain(s);
  - (C) The proposed modified combined domestic meter size calculated using the meter sizing computations for the peak domestic water demand for the premises, excluding fire demand, prepared by a District of Columbia licensed professional engineer, architect, or master plumber or other licensed professional in accordance with the District of Columbia Plumbing Code; and
  - (D) Payment of the Approved Plan Revision Engineering Review Fee.
- (3) Upon approval of a request for a Multi-Family WSRF adjustment, the Multi-Family customer will be charged the WSRF based on the approved modified combined domestic meter size as set forth in Subsection 112.10(a). No retroactive credits or refunds will be provided for WSRF billed prior to the approval of the Multi-Family WSRF adjustment.
- (4) The size of the master meter used to deliver water to the premises will be calculated using the peak water demand including fire demand in accordance with the District of Columbia Plumbing Code.

**Chapter 41, RETAIL WATER AND SEWER RATES, is amended as follows:**

**Section 4104, CUSTOMER CLASSIFICATIONS FOR WATER AND SEWER RATES, is amended to read as follows:**

**4104 CUSTOMER CLASSIFICATIONS FOR WATER AND SEWER RATES, FEES AND CHARGES**

4104.1 The customer classifications for water and sewer rates, fees and charges shall consist of a residential class, multi-family class, and a non-residential class:

- (a) Residential – a customer whose premises is a single-family dwelling unit used for domestic purposes, whether as a row, detached or semi-detached structure, or as a single dwelling unit within an apartment building, or as a single dwelling unit within a condominium, or as a single dwelling unit within a cooperative housing association, where each unit is served by a separate service line and is individually metered and used for domestic purposes; or a multi-family structure or development of less than four (4) single-family, apartment, condominium, or cooperative housing association dwelling units where all the units are used for domestic purposes and served by a single service line that is master metered; excluding a premises operated as a nursing home, dormitory or transient housing business, including, but not limited to a bed and breakfast, hotel, motel, inn, boarding house or rooming house.
- (b) Multi-Family – a customer whose premises is a multi-family structure or development (such as an apartment, condominium, or cooperative housing association) used for domestic purposes, with four or more single-family, apartment, condominium, or cooperative housing association residential dwelling units served by the same service line that is master metered; excluding a premises operated as a nursing home, dormitory or transient housing business, including, but not limited to a bed and breakfast, hotel, motel, inn, boarding house or rooming house.
- (c) Non-residential – all customers not within either the residential or multi-family class including customers whose premises is comprised of one or more units that is not used for domestic purposes and all units are served by the same service line that is master metered.

**Section 4199, DEFINITIONS, is amended as follows:**

**Subsection 4199.1 is amended by adding the following terms and definitions to read as follows:**

**Condominium** – means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the portions designated for separate ownership, provided the undivided interests in the common elements are vested in the unit owners.

**Cooperative Housing Association** – means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease or other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement.

**Dwelling Unit** – any habitable room or group of rooms with kitchen and bathroom facilities forming a single unit located within a building or structure, which is wholly or partially used or intended to be used for living, sleeping and the preparation and consumption of meals by human occupants, and is under the control of and for the use of the occupant.

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to Section 6(h) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 ((34 Stat. 115; D.C. Official Code § 42–3131.06) (2012 Repl.)), and Mayor’s Order 2002-33, dated February 11, 2002, hereby gives notice of intent to adopt the following addition of a new Chapter 21 (Vacant Property Exemption Applications) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

This rulemaking clarifies the uniform process that will be used to inform the Department of Consumer and Regulatory Affairs about a property’s qualification for an exemption from vacant property registration requirements. A decision by the Office of Administrative Hearings calls into question whether property owners are obligated to formally apply to the District for an exemption.

**A new Chapter 21, VACANT PROPERTY EXEMPTION APPLICATIONS, is added to Title 9 DCMR, TAXATION AND ASSESSMENTS, to read as follows:**

**CHAPTER 21 VACANT PROPERTY EXEMPTION APPLICATIONS****2100 VACANT PROPERTY EXEMPTION APPLICATIONS**

2100.1 A property owner of an unoccupied property seeking to avoid registration as a vacant property by virtue of an exemption listed in Section 6(b)(3)-(9) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes (D.C. Official Code § 42–3131.06) shall apply for the exemption to the Director of the Department of Consumer and Regulatory Affairs on a form provided by the Director.

All persons desiring to comment on these emergency and final regulations should submit comments in writing to Matt Orlins, Legislative Director, Department of Consumer and Regulatory Affairs, 1100 4<sup>th</sup> Street, S.W., 5<sup>th</sup> Floor, Washington, D.C. 20024, or by e-mail to [matt.orlins@dc.gov](mailto:matt.orlins@dc.gov), not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at [dcra.dc.gov](http://dcra.dc.gov) by going to the “About DCRA” tab, clicking “News Room”, and clicking on “Rulemaking.”

## DEPARTMENT OF HEALTH

NOTICE OF SECOND PROPOSED RULEMAKING

The District of Columbia Boards of Pharmacy and Medicine (the “Boards”) jointly, pursuant to the authority set forth under Section 2(b) of the Collaborative Care Expansion Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-0185; D.C. Official Code § 3-1202.08 (h)(2) (2016 Repl.)) (the “Act”), hereby gives notice of their intent to adopt the following new Chapter 100, entitled “Collaborative Practice Agreements Between Physicians and Pharmacists” of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The adoption of Chapter 100, which had until now been reserved, is necessary to implement the Act, which permits physicians and pharmacists licensed in the District of Columbia to enter into collaborative practice agreements.

The first Notice of Proposed Rulemaking was published in the *D.C. Register* on October 9, 2015 at 62 DCR 13295. The Department received comments from the following commenters: CVS Health; The National Association of Chain Drug Stores; The Washington DC Pharmacy Association and several of its members in support of the comments submitted by the Washington DC Pharmacy Association; Kaiser Permanente; Michael Kim of Grubbs Care Pharmacy; and Christopher Keays of the Drug Utilization Review Board, DC Medicaid and of Clinical Pharmacy Associates and MedNovations, Inc. The Boards received numerous comments which included a request for the Boards to provide guidance to hospitals, skilled nursing facilities, and other institutions regarding the use of collaborative practice agreements in institutional facility settings. As a result of the comments, the Board of Pharmacy held a public hearing on May 5, 2016, to receive further insight from pharmacists employed in institutional facility settings. Based upon the review of the public comments and the comments received at the public hearing, the Boards amended the following sections:

- § 10002.6(1) - to clarify the notification period to pharmacists when a physician overrides a collaborative practice agreement;
- § 10002.7 - to clarify that the collaborative practice agreement may include treatment protocols that include a physician’s delegation of authority to the pharmacist(s) to obtain laboratory tests provided the tests relate directly to the drug therapy management under the protocol;
- § 10002.9 - to clarify that pharmacists engaging in collaborative practice shall not delegate any collaborative practice activities to any other staff;
- § 10005.2 - to clarify notification periods to pharmacists when a physician may override the collaborative practice agreement to twenty-four hours (24) or one (1) business day;
- § 10005.3 - to clarify parties who should be notified when there is a change in either the physician or pharmacists location, employer, or ownership;

- Added a new § 10009 entitled, “Collaborative Practice in Institutional Facilities”, with provisions regulating collaborative practice agreements between pharmacists and physicians in institutional facility settings;
- § 10099.1 - to add definitions for the terms Institutional facility and Institutional facility practice protocol.

Therefore, the rulemaking is being republished for a second comment period. The Boards give notice of their intent to adopt these rules as final, in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

**Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended by adding a new Chapter 100 to read as follows:**

**CHAPTER 100      COLLABORATIVE PRACTICE AGREEMENTS BETWEEN  
PHYSICIANS AND PHARMACISTS**

10000	General Provisions
10001	Requirements for Participation in a Collaborative Practice Agreement
10002	Use of a Collaborative Practice Agreement and Required Content
10003	Signed Authorization
10004	Informed Patient Consent and Withdrawal of Participation
10005	Termination or Alteration of the Collaborative Practice Agreement
10006	Approval of Protocols Outside the Standard of Care
10007	Recordkeeping
10008	Disapproval and Revocation of Collaborative Practice Agreements
10009	Collaborative Practice in Institutional Facilities
10099	Definitions

**10000      GENERAL PROVISIONS**

- |         |   |
|---------|---|
| 10000.1 | Participation in a collaborative practice agreement shall be voluntary, and no licensed physician, pharmacist or institution shall be required to participate.  |
| 10000.2 | Neither a pharmacist nor physician shall provide economic incentives to the other for the purpose of entering into a collaborative practice agreement.  |
| 10000.3 | A physician shall not be employed by any pharmacist or pharmacy for the sole purpose of collaborative practice.   |
| 10000.4 | Patient entry into a collaborative practice arrangement shall be initiated by an authorizing protocol that includes coverage of the patient(s), or a written referral from the licensed physician to the pharmacist for a specific patient. |
| 10000.5 | When patient entry is initiated by the pharmacist, the pharmacist shall:  |



- (a) Instruct the patient to follow up with the authorizing physician within the time period established in the collaborative practice agreement;
- (b) Notify the authorizing physician of the encounter in writing within twenty-four (24) hours or one (1) business day; and
- (c) Obtain a referral from the authorizing physician before providing further collaborative practice services to the patient.

10000.6 A pharmacist who is a party to a collaborative practice agreement shall utilize an area for in person, telephonic or other approved electronic consultations relating to the management of drug therapy that ensures the confidentiality of the patient information being discussed.

10000.7 Nothing in these regulations shall be construed or interpreted to allow a pharmacist to accept delegation of a physician's authority outside of or beyond the scope of the pharmacist's practice.

**10001 REQUIREMENTS FOR PARTICIPATION IN A COLLABORATIVE PRACTICE AGREEMENT**

10001.1 A pharmacist shall only participate in a collaborative practice agreement in accordance with this chapter.

10001.2 A licensed physician shall have a valid patient-physician relationship with a patient that he or she refers to a pharmacist for participation in a collaborative practice agreement under this chapter.

10001.3 For purposes of this chapter, an internet based or telephone consultation or questionnaire evaluation is not adequate to establish a valid patient-physician relationship unless and except as otherwise specifically permitted by District law.

10001.4 The licensed physician and pharmacist who are parties to a collaborative practice agreement shall hold an active license in good standing in the District of Columbia.

10001.5 The Boards may deny approval of a physician or pharmacist to participate in a collaborative practice agreement if the physician or pharmacist has:

- (a) A final order by the governing Board disciplining the physician or pharmacist's license for a practice issue within the five (5) years immediately preceding the formation of the agreement; or
- (b) Limitations placed on the physician or pharmacist's license by the governing board.

- 10001.6 The collaborative practice agreement shall be within the scope of the licensed physician's current practice.
- 10001.7 To be eligible to participate in a collaborative practice agreement, a pharmacist:
- (a) Shall possess relevant advanced training as indicated by one of the following:
    - (1) Certification as a specialist by:
      - (i) The Board of Pharmaceutical Specialties;
      - (ii) The Commission for Certification in Geriatric Pharmacy; or
      - (iii) Another credentialing body approved by the Board of Pharmacy; or
    - (2) Successful completion of:
      - (i) A residency accredited by the American Society of Health-Systems Pharmacists, a body approved by the Board of Pharmacy or offered by a body accredited by the Accreditation Council for Pharmacy Education; or
      - (ii) A certificate program approved by the Board of Pharmacy; and
  - (b) Shall have successfully completed:
    - (1) A minimum of three (3) years of relevant clinical experience, if the pharmacist holds an academic degree of Doctor of Pharmacy; or
    - (2) A minimum of five (5) years of relevant clinical experience, if the pharmacist holds an academic degree of Bachelor of Science in Pharmacy; and
  - (c) Shall have documented training related to the area of practice covered by the collaborative practice agreement.

**10002 USE OF COLLABORATIVE PRACTICE AGREEMENTS AND REQUIRED CONTENT**

- 10002.1 The management of drug therapy pursuant to a collaborative practice agreement shall be initiated by an authorizing protocol that includes coverage of the

patient(s) or a written referral from the licensed physician to the pharmacist for a specific patient.

- 10002.2 When a patient encounter is initiated through an authorizing protocol, the pharmacist shall notify the authorizing physician in writing within twenty-four (24) hours or one (1) business day.
- 10002.3 The authority granted by the physician to the pharmacist must be within the scope of the physician's practice.
- 10002.4 The collaborative practice agreement may allow the pharmacist, within the pharmacist's scope of practice, to conduct activities approved by the physician pursuant to the agreement and within the authority established by the law and regulations.
- 10002.5 The collaborative practice agreement shall not prohibit the pharmacist from providing other pharmaceutical services that are within the pharmacist's scope of practice.
- 10002.6 A collaborative practice agreement shall be based upon treatment protocols that are generally accepted as the clinical standard of care within the medical and pharmacy professions, or approved by the Boards of Medicine and Pharmacy in accordance with § 10006 of this chapter, and shall include:
- (a) Identification of the physicians(s) and pharmacist(s) who are parties to the agreement;
  - (b) The location(s) where the pharmacist(s) and physician(s) may provide services under the collaborative practice agreement;
  - (c) The name, address, and telephone number of the person(s) who are to receive correspondence from the Boards related to the collaborative practice agreement;
  - (d) A detailed description of the disease state or condition, drugs or drug categories, drug therapies, devices, and any necessary incidental tests, authorized by the physician, and the activities allowed in each case;
  - (e) A detailed description of the methods, procedures, decision criteria, and plan the pharmacist is to follow when conducting allowed activities;
  - (f) A detailed description of the activities and procedures that the pharmacist is to follow, including documentation of decisions made, and a plan or appropriate mechanism for communication, feedback, and reporting to the physician activities and results concerning specific decisions made;

- (g) The conditions under which the pharmacist may initiate, modify, or discontinue a drug therapy;
- (h) Directions concerning the monitoring of a drug therapy, including the conditions that would warrant a modification to the dose, dosage regime, or dosage form of the drug therapy;
- (i) The frequency and the manner in which the pharmacist conducts the management of drug therapy;
- (j) A method for the physician to monitor compliance with the agreement and clinical outcomes and to intercede where necessary;
- (k) A description of the continuous quality improvement efforts used to evaluate effectiveness of patient care and ensure positive patient outcomes;
- (l) A provision that allows the physician to override a collaborative practice decision made by the pharmacist whenever he or she deems it necessary or appropriate, with notification to the pharmacist of the override within twenty-four (24) hours or one (1) business day, or as noted in the collaborative practice agreement;
- (m) A provision that allows either party to cancel the collaborative practice agreement by written notification;
- (n) An effective date; and
- (o) The signatures of all collaborating pharmacists and physicians who are party to the collaborative practice agreement, as well as dates of signing.

10002.7 The collaborative practice agreement may include treatment protocols that include a physician(s) delegation of authority to the pharmacist(s) to obtain laboratory tests provided the tests relate directly to the drug therapy management under the protocol.

10002.8 In addition to the requirements set forth in the collaborative practice agreement, documentation of each intervention, including changes in dose, duration or frequency of medication prescribed, shall be recorded in the pharmacist's prescription record, patient profile, a separate log book, or in some other appropriate system.

10002.9 Pharmacists engaging in collaborative practice shall not delegate any collaborative practice activities to any other staff.

- 10002.10 Documentation of allowed activities must be kept as part of the patient's permanent record and be readily available to other health care professionals providing care to that patient and who are authorized to receive it. Documentation of allowed activities shall be considered protected health information.
- 10002.11 Oral communications between the physician and pharmacist shall be summarized in the documentation maintained by the pharmacist and forwarded to the physician.
- 10002.12 Unless an alternative time period is stated in the collaborative practice agreement, the pharmacist shall inform the physician within forty-eight (48) hours if the pharmacist modifies the drug dose or agent.
- 10002.13 Unless an alternative time period is stated in the collaborative practice agreement, the pharmacist shall inform the physician within twenty-four (24) hours if the pharmacist detects an abnormal result from an assessment activity.
- 10002.14 Amendments to a collaborative practice agreement must be documented, signed, and dated, and for collaborative practice agreements containing approved protocols outside the generally accepted clinical standard of care, the amendments must be approved by the Boards before they are implemented.
- 10002.15 At a minimum, the collaborative practice agreement shall have a documented review and, if necessary, be revised every year.

**10003 SIGNED AUTHORIZATION**

- 10003.1 The signatories to a collaborative practice agreement shall be a District of Columbia licensed physician involved directly in patient care where patients receive services and a District of Columbia licensed pharmacist involved directly in patient care where patients receive services.
- 10003.2 The physician may designate alternate physicians, and the pharmacist may designate alternate pharmacists, provided that the alternates are signatories to the agreement, meet the educational, licensure, and training requirements of this Chapter, and are involved directly in patient care where patients receive services. Nothing in this Section shall be construed as prohibiting the practice of telemedicine if it is otherwise permitted by District law.

**10004 INFORMED PATIENT CONSENT AND WITHDRAWAL OF PARTICIPATION**

- 10004.1 Documented informed consent from the patient shall be obtained by the physician who authorizes the patient to participate in the collaborative practice agreement or by the pharmacist who is also a party to the collaborative practice agreement.

- 10004.2 For purposes of this section, documented informed consent shall mean either written consent signed by a patient, or its electronic equivalent, maintained in a patient's record.
- 10004.3 The patient may decline to participate or withdraw from participation at any time.
- 10004.4 Prior to obtaining a patient's consent to participate in a collaborative practice agreement, the physician or pharmacist, or both, shall inform a patient:
- (a) Of the procedures that will be utilized for drug therapy management under the collaborative practice agreement, and such discussion shall be documented in the patient record;
  - (b) That the patient may decline to participate or withdraw from participating in the drug therapy management at any time; and
  - (c) That neither the physician nor the pharmacist has been coerced, given economic incentives, excluding normal reimbursement for services rendered, or involuntarily required to participate.

**10005            TERMINATION OR ALTERATION OF THE COLLABORATIVE PRACTICE AGREEMENT**

- 10005.1 The collaborative practice agreement may be terminated at any time upon written notice by the pharmacist, physician, or the patient. Notice of termination shall be provided to all parties to the collaborative practice agreement and the patient within fourteen (14) days of termination.
- 10005.2 A physician may override the collaborative practice agreement whenever he or she deems such action necessary or appropriate for a specific patient, and shall notify the pharmacist of the override within twenty-four (24) hours or one (1) business day.
- 10005.3 If either the physician or the pharmacist who is a party to the collaborative practice agreement has a change of practice location, employer, or ownership, that person shall notify the other party and all of the physician's or pharmacist's patients who are participants in the collaborative practice agreement.

**10006            APPROVAL OF PROTOCOLS OUTSIDE THE STANDARD OF CARE**

- 10006.1 If a physician and a pharmacist intend to manage or treat a condition or disease state for which there is not a protocol that is generally accepted as the clinical standard of care, the physician and pharmacist shall apply for approval. The Boards shall receive and review the proposed treatment protocol and jointly approve or disapprove.

10006.2 Any procedure outside generally accepted clinical practice shall be approved by the Boards, and any changes to a protocol for procedures outside the generally accepted clinical practice shall be approved by the Boards before they are implemented.

10006.3 Application and approval are not needed for treatment of conditions for which there is a generally accepted clinical standard of care, but for which the physician wants to increase the monitoring and oversight of the condition over what the protocol recommends.

10006.4 In order to apply for approval of a protocol outside the generally accepted clinical standard of care, the physician and the pharmacist shall jointly submit:

- (a) An application on the required form and the required fee;
- (b) A copy of the proposed protocol; and
- (c) Supporting documentation that the protocol is safe and effective for the particular condition or disease state for which the physician and the pharmacist intend to manage or treat through a collaborative practice agreement.

10006.5 To apply for approval to make changes to an approved protocol outside of the generally accepted clinical standard of care, the physician and the pharmacist shall jointly submit:

- (a) An application on the required form and the required fee;
- (b) A copy of the proposed changes to the protocol; and
- (c) Supporting documentation that the change(s) to the protocol is safe and effective for the particular condition or disease state for which the physician and the pharmacist intend to manage or treat through a collaborative practice agreement.

**10007 RECORDKEEPING**

10007.1 Signatories to a collaborative practice agreement shall keep a copy of the agreement on file at their primary places of practice.

10007.2 The referral of a patient from the physician authorizing the implementation of drug therapy management pursuant to the collaborative practice agreement shall be noted in the patient's medical record and kept on file by the pharmacist.

- 10007.3 The patient's documented informed consent shall be retained by the parties to the collaborative practice agreement.
- 10007.4 A copy of the collaborative practice agreement, any amendments to the agreement, and the subsequent termination of any such agreement, if applicable, shall be available as follows:
- (a) At the practice site of any physician who is a party to the collaborative practice agreement;
  - (b) At the practice site of any pharmacist who is a party to the collaborative practice agreement;
  - (c) At the institution or facility where a collaborative practice agreement is in place;
  - (d) To any patient who is being managed under the collaborative practice agreement, upon request; and
  - (e) Upon request, to representatives of the Boards of Pharmacy and Medicine.
- 10007.5 Documentation of activities performed under a collaborative practice agreement or the physician's specific instructions shall be maintained in such a manner that it is accessible to the:
- (a) Physician;
  - (b) Pharmacist; and
  - (c) The Boards of Pharmacy and Medicine upon request.
- 10007.6 Documentation may be maintained in written or electronic form.
- 10007.7 A pharmacist or physician who is a party to the collaborative practice agreement shall have access to the records of the patient who is the recipient of the management of drug therapy.
- 10007.8 A patient's records related to the management of drug therapy under a collaborative practice agreement may be maintained in a computerized recordkeeping system which meets all requirements for Federal and State certified electronic health care records.
- 10007.9 The handling of all patient records by the pharmacist providing the management of drug therapy must comply with the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104-191, 110 Stat. 1936).



10007.10 The Boards may conduct random audits to ensure compliance with the provisions of the Act and this chapter.

**10008 DISAPPROVAL AND REVOCATION OF COLLABORATIVE PRACTICE AGREEMENTS**

10008.1 The Board of Pharmacy and the Board of Medicine may disapprove or revoke a collaborative practice agreement if the Boards find:

- (a) Inadequate training, experience, or education of the physician(s) or pharmacist(s) to implement the protocol or protocols specified in the physician-pharmacist agreement;
- (b) The collaborative practice agreement fails to comply with the requirements of this chapter or the Act;
- (c) The collaborative practice agreement is intended to manage or treat a condition or disease state for which there is not a protocol that is generally accepted as the clinical standard of care, or which is not approved by the Boards; or
- (d) Either party to the agreement has been formally disciplined by any health professional licensing board in any jurisdiction, or is otherwise no longer licensed in good standing in the District of Columbia.

**10009 COLLABORATIVE PRACTICE IN INSTITUTIONAL FACILITIES**

10009.1 The provisions of this subchapter shall apply to collaborative practice arrangements between pharmacists and physicians in institutional facility settings.

10009.2 To the extent that there is any conflict between this subchapter and any other section of this chapter, the provisions of this subchapter shall prevail with respect to collaborative practice arrangements between pharmacists and physicians in institutional facility settings.

10009.3 Nothing in this chapter shall be construed to prohibit pharmacists who practice in institutional facility settings from participating in collaborative practice arrangements pursuant to an institutional facility practice protocol approved by the institutional facility's Pharmacy and Therapeutics Committee ("P and T Committee"), the institutional facility's medical staff executive committee, or the institutional facility's medical director.

10009.4 Pharmacists who practice in institutional facility settings shall only participate in collaborative practice arrangements pursuant to an institutional facility practice protocol approved by the institutional facility's P and T Committee, the

institutional facility's medical staff executive committee, or the institutional facility's medical director.

- 10009.5 Nothing in this subchapter shall be construed or interpreted to allow a pharmacist to accept delegation of a physician's authority outside of or beyond the scope of the pharmacist's practice.
- 10009.6 The licensed physician and pharmacist who are parties to an institutional facility practice protocol shall hold an active license in good standing in the District of Columbia.
- 10009.7 The Boards may deny approval of a physician or pharmacist to participate in collaborative practice under an institutional facility practice protocol if the physician or pharmacist has:
- (a) A final order by the governing Board disciplining the physician or pharmacist's license for a practice issue within the five (5) years immediately preceding the formation of the agreement; or
  - (b) Limitations placed on the physician or pharmacist's license by the governing board.
- 10009.8 The collaborative practice services under an institutional facility practice protocol shall be within the scope of the licensed physician(s)'s current practice.
- 10009.9 To be eligible to participate in an institutional facility practice protocol, a pharmacist:
- (a) Shall possess relevant advanced training as indicated by one of the following:
    - (1) Certification as a specialist by:
      - (i) The Board of Pharmaceutical Specialties;
      - (ii) The Commission for Certification in Geriatric Pharmacy; or
      - (iii) Another credentialing body approved by the Board of Pharmacy; or
    - (2) Successful completion of:
      - (i) A residency accredited by the American Society of Health-Systems Pharmacists, a body approved by the Board of

Pharmacy or offered by a body accredited by the Accreditation Council for Pharmacy Education; or

- (ii) A certificate program approved by the Board of Pharmacy; and

(b) Shall have successfully completed:

- (1) A minimum of three (3) years of relevant clinical experience, if the pharmacist holds an academic degree of Doctor of Pharmacy; or
- (2) A minimum of five (5) years of relevant clinical experience, if the pharmacist holds an academic degree of Bachelor of Science in Pharmacy; and

(c) Shall have documented training related to the area of practice covered by the institutional facility practice protocol.

10009.10 Prior to providing collaborative practice services, pharmacists who practice in institutional facility settings shall review the following information in the patient's chart:

- (a) Patient's name, gender, date of birth, height, and weight;
- (b) Patient's diagnosis or diagnoses from the treating physician;
- (c) Patient's medication history;
- (d) Patient's prior lab values;
- (e) Patient's vital signs; and
- (f) Patient's known allergies.

10009.11 The institutional facility shall create an institutional facility practice protocol identifying where the information required in § 10009.10 will be located, and how it will be accessed throughout the facility by the participating pharmacists and physicians.

10009.12 The institutional facility practice protocol shall serve as the collaborative practice agreement in these settings, and the institutional facility practice protocol shall identify which physicians and pharmacists are authorized and have agreed to provide collaborative practice services.

10009.13 The institutional facility practice protocol shall contain a plan for development, training, administration, and quality assurance of the protocol.

- 10009.14 An institutional facility practice protocol based upon treatment protocols that are generally accepted as the clinical standard of care within the medical and pharmacy professions, and that complies with the applicable requirements of this subchapter is deemed approved by the Boards.
- 10009.15 An institutional facility practice protocol approved by the Boards of Medicine and Pharmacy in accordance with §10006 or § 10009.14 of this subchapter shall contain the following information:
- (a) Identification of the physicians(s) and pharmacist(s) who are parties to the institutional facility practice protocol;
  - (b) The location(s) where the pharmacist(s) and physician(s) may provide services under the institutional facility practice protocol;
  - (c) The name, address, and telephone number of the person(s) who are to receive correspondence from the Boards related to the institutional facility practice protocol;
  - (d) A detailed description of the disease state or condition, drugs or drug categories, drug therapies, devices, and any necessary incidental tests, authorized by the physician, and the activities allowed in each case;
  - (e) A detailed description of the methods, procedures, decision criteria, and plan the pharmacist is to follow when conducting allowed activities;
  - (f) A detailed description of the activities and procedures that the pharmacist is to follow, including documentation of decisions made, and a plan or appropriate mechanism for communication, feedback, and reporting to the physician activities and results concerning specific decisions made;
  - (g) The conditions under which the pharmacist may initiate, modify, or discontinue a drug therapy;
  - (h) Directions concerning the monitoring of a drug therapy, including the conditions that would warrant a modification to the dose, dosage regime, or dosage form of the drug therapy;
  - (i) The manner in which pharmacist's drug therapy management will be monitored by the prescriber, including method and frequency;
  - (j) A specified time within which the pharmacist must notify the prescriber of any modifications of drug therapy;

- (k) A description of the continuous quality improvement efforts used to evaluate effectiveness of patient care and ensure positive patient outcomes;
  - (l) A provision that allows the prescriber to override any action taken by the pharmacist when the prescriber deems it to be necessary;
  - (m) The effective date; and
  - (n) A provision addressing how drug therapy management will be handled when the patient has more than one prescriber involved in evaluating or treating the medical condition which is the subject of the protocol. All prescribers who are actively involved in the management of the relevant conditions shall be parties to the protocol.
- 10009.16 The institutional facility practice protocol may include a physician(s) delegation of authority to the pharmacist(s) to obtain laboratory tests provided the tests relate directly to the drug therapy management under the protocol.
- 10009.17 Unless an alternative time period is stated in the institutional facility practice protocol, the pharmacist shall inform the physician within forty-eight (48) hours if the pharmacist modifies the drug dose or agent.
- 10009.18 Unless an alternative time period is stated in the institutional facility practice protocol, the pharmacist shall inform the physician within twenty-four (24) hours if the pharmacist detects an abnormal result from an assessment activity.
- 10009.19 Amendments to an institutional facility practice protocol must be documented, signed, and dated, and for institutional facility practice protocols containing approved protocols outside the generally accepted clinical standard of care, the amendments must be approved by the Boards before they are implemented.
- 10009.20 At a minimum, the institutional facility practice protocol shall have a documented review and, if necessary, be revised every year.
- 10009.21 The institutional facility's P and T Committee, medical staff executive committee, or medical director shall serve as the authorizing agent for the organization's medical staff, identifying which physicians or physician groups are authorized to participate under the institutional facility practice protocol, may restrict authorization for certain protocols to specific physicians, physician groups, or specialties, and shall ensure that the participating physicians are informed of the protocol and consent to participation.
- 10009.22 A pharmacist engaging in collaborative practice under an institutional facility's practice protocol shall read, sign, and date the protocol.

- 10009.23 The institutional pharmacy manager, or other designated person set forth in the institutional facility practice protocol, shall ensure that the institutional facility practice protocol is maintained current, that changes to the protocol are updated timely including the identification of the persons authorized to participate under the protocol, that copies of the protocol shall be maintained onsite where collaborative practice services take place, and that the protocol is revised as medically necessary.
- 10009.24 Pharmacists engaging in collaborative practice shall not delegate any collaborative practice activities to any other staff.
- 10009.25 All activity by the pharmacist, including changes in dose, duration or frequency of medication prescribed, shall be recorded in the pharmacist's prescription record, patient profile, a separate log book, or in some other appropriate system.
- 10009.26 A copy of the institutional facility practice protocol, any amendments to the protocol, and the subsequent termination of any such protocol, if applicable, shall be available to:
- (a) Any physician who is a party to the institutional facility practice protocol;
  - (b) Any pharmacist who is a party to the institutional facility practice protocol;
  - (c) Any patient who is being managed under the institutional facility practice protocol, upon request; and
  - (d) Representatives of the Boards of Pharmacy and Medicine, upon request.
- 10009.27 Documentation of activities performed under an institutional facility practice protocol or the physician's specific instructions shall be maintained in such a manner that it is accessible to the:
- (a) Physician;
  - (b) Pharmacist; and
  - (c) The Boards of Pharmacy and Medicine upon request.
- 10009.28 Documentation may be maintained in written or electronic form.
- 10009.29 The Board of Pharmacy and the Board of Medicine may disapprove or revoke an institutional facility practice protocol if the Boards find:
- (a) Inadequate training, experience, or education of the physician(s) or pharmacist(s) to implement the protocol or protocols;

- (b) The institutional facility practice protocol fails to comply with the requirements of this subchapter or the Act;
- (c) The institutional facility practice protocol is intended to manage or treat a condition or disease state for which there is not a protocol that is generally accepted as the clinical standard of care, or which is not approved by the Boards; or
- (d) Any party to the protocol has been formally disciplined by any health professional licensing board in any jurisdiction, or is otherwise no longer licensed in good standing in the District of Columbia.

10009.30 The Boards may conduct random audits to ensure compliance with the provisions of the Act and this subchapter.

## **10099 DEFINITIONS**

10099.1 As used in this chapter, the following terms have the meanings ascribed:

**Act-** the Collaborative Care Expansion Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-0185; 60 DCR 7591 (May 31, 2013)).

**Collaborative practice agreement-** means a voluntary written agreement between a licensed pharmacist and a licensed physician that has been approved by the Board of Pharmacy and the Board of Medicine, or between a licensed pharmacist and another health practitioner with independent prescriptive authority licensed by a District health occupation board, that defines the scope of practice between the licensed pharmacist and licensed physician, or other health practitioner, for the initiation, modification, or discontinuation of a drug therapy regimen.

**Institutional facility-** means any organization whose primary purpose is to provide a physical environment for patients to obtain health care services, including a(n):

- (1) Hospital;
- (2) Convalescent home;
- (3) Nursing home;
- (4) Extended care facility;
- (5) Mental health facility;
- (6) Rehabilitation center;
- (7) Psychiatric center;
- (8) Developmental disability center;
- (9) Substance use disorder treatment center;
- (10) Family planning clinic;

- (11) Correctional institution;
- (12) Hospice;
- (13) Public health facility.

**Institutional facility practice protocol** – means a written plan, policy, procedure, or agreement that authorizes drug therapy management between pharmacists and physicians within an institutional facility setting as developed and determined by the institutional facility’s P and T Committee, the institutional facility’s medical staff executive committee, or the institutional facility’s medical director.

**Physician**- a person holding a degree in medicine (MD) or osteopathy (DO).

**Standard of Care**- the course of action that other prudent and well-trained health professionals in the same field of practice would customarily take under the same or similar circumstances.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal, at [Angli.Black@dc.gov](mailto:Angli.Black@dc.gov), (202) 442-5977.



**DEPARTMENT OF MOTOR VEHICLES****NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Motor Vehicles (“Director”), pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 50-905 (2014 Repl.)), Sections 6 and 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121, 1125; D.C. Official Code §§ 50-2201.03 and 50-1401.01 (2014 Repl.)) and Mayor’s Order 2016-077, dated May 2, 2016, hereby gives notice of the intent to adopt the following amendments to Sections 106 (Special Physical Requirements and Examinations: Persons with Diabetes, Seizure Disorders, Alteration or Loss of Consciousness, and Hearing Impairment) and 111 (Re-Examination Requirements) of Chapter 1 (Issuance of Driver Licenses) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (“DCMR”).

The proposed rule will expand the resources available for a person age seventy (70) or over seeking a driver license or renewal of a driver license by allowing a medical practitioner, such as a physician’s assistant, rather than just a physician, to certify that the individual is physically and mentally competent to operate a motor vehicle, and repeal the reference to a Medical Board and referral of a driver involved in a traffic fatality to the Department of Human Services for a medical examination.

The Director hereby gives notice of intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 1, ISSUANCE OF DRIVER LICENSES, of Title 18 DCMR, VEHICLES AND TRAFFIC, is amended as follows:**

**Sections 106, SPECIAL PHYSICAL REQUIREMENTS AND EXAMINATIONS: PERSONS WITH DIABETES, SEIZURE DISORDERS, ALTERATION OR LOSS OF CONSCIOUSNESS, AND HEARING IMPAIRMENT, is amended as follows:**

**Subsections 106.1, 106.7, 106.8, 106.9 and 106.10 are amended by striking the word “physician” wherever found and inserting the phrase “licensed medical practitioner” in its place.**

**Subsection 106.2 is amended by striking the phrase “Medical Board for evaluation” and inserting the phrase “the Department of Motor Vehicles’ Driver Services Administrator for review and approval” in its place.**

**Subsection 106.3 is amended by striking the phrase “Medical Board for evaluation and clearance” and inserting the phrase “the Department of Motor Vehicles’ Driver Services Administrator for review and approval” in its place.**

Subsection 106.12 is amended by striking the phrase “Medical Board” and inserting the phrase “the Department of Motor Vehicles’ Driver Services Administrator” in its place.

Section 111, RE-EXAMINATION REQUIREMENTS, is amended as follows:

Subsection 111.3(b) is repealed.

Subsection 111.5(a) is amended by striking the word “physician” wherever found and inserting the phrase “licensed medical practitioner” in its place.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, with David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024, [dmvpubliccomments@dc.gov](mailto:dmvpubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov). Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposed rulemaking may be obtained, at cost, by writing to the above address.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGRM13-2017-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT,

and

RM27-2017-02, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT,

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to Sections 34-802, 2-505, and 34-912(b) of the District of Columbia Code<sup>1</sup> of its intent to amend Chapter 13 (Rules Implementing the Public Utilities Reimbursement Fee Act of 1980) and Chapter 27 (Regulation of Telecommunications Service Providers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed amendments to Chapter 13 and Chapter 27 change the deadlines for mailing out the Commission's annual surveys and the filing of completed annual surveys by the public utilities, competitive local exchange carriers, competitive electricity suppliers, and competitive natural gas suppliers. This Notice proposes to change the deadline for mailing out the annual surveys to March 1 of each year, while the filing deadline for the annual surveys will be changed to April 1 every year. The proposed amendments also clarify that telecommunications service providers must report jurisdictional revenue in accordance with 47 CFR Part 36.

**Section 1301, DETERMINATION OF REIMBURSEMENTS, is amended as follows:**

1301.2 By March 1st of each year the Commission shall send to each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC an Annual Survey and Affidavit for assessment purposes. Each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC shall file its responses to the Annual Survey with the Commission by April 1st. Each response shall include a report of the responder's gross jurisdictional revenues for the proceeding calendar year ending December 31st.

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<sup>1</sup> D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2016 Repl.) and D.C. Official Code § 34-912(b) (2012 Repl.).

1301.3 Failure to respond to the Commission issued Annual Survey by April 1st shall result in a penalty of one hundred dollars (\$100.00) per day for each day that the filing is late.

**Section 2701, ASSESSMENT OF COSTS, is amended as follows:**

2707.1 All telecommunications service providers in the District shall be required to file an annual report with the Commission on the Commission's annual report form by April 1st of each year, including the following information:

- (a) Type of services being provided to customers in the District as of the previous year ending December 31st;
- (b) Number of lines and customers, classified by residential category (single family or multi-family complex) and commercial category (business or government);
- (c) Jurisdictional revenue for the previous year ending December 31, in accordance with 47 CFR Part 36;
- (d) Name, address, telephone number, fax number, and e-mail address, if available, of the regulatory and customer service contacts;
- (e) The means by which the telecommunications service provider is providing service (such as, resale through the incumbent local exchange carrier, resale through another provider, facilities-based including lease of unbundled network elements, resale, and facilities-based, or other); and
- (f) Such other information as the Commission may require.

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

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
CONSTRUCTION CODES COORDINATING BOARD**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2012 Repl. & 2016 Supp.)), and Mayor's Order 2009-22, dated February 25, 2009, as amended, hereby gives notice of the adoption of the following emergency rulemaking amending Chapters 1 (Administration and Enforcement), 14 (Exterior Walls), 26 (Plastic), 35 (Referenced Standards) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes Supplement of 2013) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessitated by the immediate need to update and revise provisions in the D.C. Building Code, as defined in 12-A DCMR § 101.2, relating to exterior wall materials and related sections. It will also eliminate a recently added requirement to list, prior to the first inspection, the subcontractors that will work on a job requiring a permit.

This emergency rulemaking was adopted on August 10, 2017, to become effective immediately. Pursuant to Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl. & 2016 Supp.)), this emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of effectiveness and will expire on December 8, 2017.

To clearly show the changes being made to the Construction Codes Supplement, additions are shown in underlined text and deletions are shown in ~~striketrough~~ text.

The process for submitting comments on the proposed rulemaking is detailed on the final page of this Notice.

The Chairperson also hereby gives notice of the intent to take final rulemaking action to adopt this amendment. Pursuant to Section 10(a) of the Act, the proposed amendment will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the amendment.

**Title 12-A, BUILDING CODE SUPPLEMENT OF 2013, is amended as follows:**

**Chapter 1, ADMINISTRATION AND ENFORCEMENT, Section 105, PERMITS, is amended as follows:**

**105.3 Permit Applications**

*Amend Section 105.3, Subsection 11, of the Building Code to read as follows:*

11. Provide name and contact information, including a valid electronic mailing address, for the general contractor or construction manager ~~and each subcontractor~~, if known, when the application is filed. If the information is not known at the time of filing, the information shall be provided to the *code official* as soon as the general contractor or construction manager ~~or any subcontractor~~ is selected, but no later than the scheduling of the first inspection.

**Chapter 14, EXTERIOR WALLS, Section 1403, PERFORMANCE REQUIREMENTS, is amended as follows:**

Amend Section 1403.5 of the International Building Code to strike Section 1403.5, Vertical and lateral flame propagation, in its entirety, and insert a new Section 1403.5 in the Building Code in its place to read as follows:

**1403.5 Vertical and lateral flame propagation.** Exterior walls on buildings of Type I, II, III or IV construction that are greater than 40 feet (12 192 mm) in height above grade plane and contain a combustible water-resistive barrier shall be tested in accordance with and comply with the acceptance criteria of NFPA 285. For the purposes of this section, fenestration products and flashing of fenestration products shall not be considered part of the water-resistive barrier.

**Exceptions:**

1. Walls in which the water-resistive barrier is the only combustible component and the exterior wall has a wall covering of brick, concrete, stone, terra cotta, stucco or steel with minimum thicknesses in accordance with Table 1405.2.
2. Walls in which the water-resistive barrier is the only combustible component and the water-resistive barrier has a peak heat release rate of less than 150 kW/m<sup>2</sup>, a total heat release of less than 20 MJ/m<sup>2</sup> and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and has a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m<sup>2</sup>.

**Section 1405, INSTALLATION OF WALL COVERINGS, is added as follows:**

Amend Table 1405.2, MINIMUM THICKNESS OF WEATHER COVERINGS, of the International Building Code to strike the entry for “Precast stone facing” in its entirety, and revise the entry for “Minimum Thickness” of “Porcelain Tile” to read as follows:

**TABLE 1405.2  
MINIMUM THICKNESS OF WEATHER COVERINGS**

Covering Type	Minimum Thickness (inches)
Precast stone facing <sup>e</sup>	0.625

Porcelain tile	0.025 0.25
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e. Includes scratch coat, setting bed, and precast stone.

**Chapter 26, PLASTIC, Section 2603, FOAM PLASTIC INSULATION, is amended as follows:**

*Amend Section 2603.5.5 of the Building Code to read as follows:*

*Strike Section 2603.5.5, Vertical and lateral fire propagation, in the Building Code in its entirety and insert a new Section 2603.5.5 in its place to read as follows:*

~~**2603.5.5 Vertical and lateral fire propagation.** Exterior wall assemblies containing foam plastic insulation shall provide protection against vertical and lateral flame propagation in accordance with Sections 2603.5.5.1, 2603.5.5.2, or 2603.5.5.3.~~

**Exceptions:**

- ~~1. One-story buildings.~~
- ~~2. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.~~

~~**2603.5.5.1 Testing to NFPA 285.** Exterior wall assemblies shall be tested in accordance with NFPA 285 and comply with the acceptance criteria of NFPA 285.~~

~~**2603.5.5.2 Non Combustible Covering.** Walls assemblies where the foam plastic insulation is covered on each face by a minimum of 1 inch (25mm) thickness of masonry or concrete and meeting one of the following:~~

- ~~1. There is no air space between the insulation and the concrete or masonry.~~
- ~~2. The insulation has a flame spread index of not more than 25 as determined in accordance with ASTM E 84 or UL 723 and the maximum air space between the insulation and the concrete or masonry is not more than 1 inch (25mm).~~

~~**2603.5.5.3 Fireblocking.** Concealed spaces within exterior wall assemblies shall be fireblocked in such a manner so as to cut off the concealed openings (both vertical and horizontal), and form an effective barrier between floors.~~

~~2603.5.5.3.1 Location of fireblocking.~~ Fireblocking shall be installed within concealed spaces of exterior wall assemblies at every floor level or at maximum vertical intervals not exceeding 20 feet. Fireblocking shall be installed at horizontal intervals not exceeding 10 feet in exterior walls of combustible construction and 65 feet in exterior walls of noncombustible construction. Fireblocking required in this section shall extend through any concealed air space and through any foam plastic material in noncombustible construction.

~~2603.5.5.3.2 Materials.~~ Materials used for fireblocking in exterior wall assemblies shall comply with one or more of the following:

- ~~1. Materials demonstrated to remain in place and that prevent the passage of flame and hot gases sufficient to ignite cotton waste where subjected to ASTM E 119 or UL 263 time temperature conditions under a minimum positive pressure differential of 0.01 inch (2.49 Pa) of water at the location of the penetration for a time period of 15 minutes.~~
- ~~2. Gypsum board having a minimum thickness of 1/2 inch (12.7 mm) provided all joints have continuous support.~~
- ~~3. Sheet steel not less than 26 ga (0.38 mm) thickness provided all joints have continuous support.~~
- ~~4. Cement based millboard having a minimum thickness of 1/4 inch (6.4 mm).~~
- ~~5. Batts or blankets of mineral wool, mineral fiber or other approved materials installed in such a manner to securely remain in place.~~
- ~~6. Cellulose insulation installed as tested for the specific application.~~
- ~~7. In buildings of noncombustible construction, fire retardant wood in accordance with Section 603.1.~~
- ~~8. In buildings of combustible construction, materials listed in Section 718.2.1.~~

2603.5.5 Vertical and lateral fire propagation. The exterior wall assembly shall be tested in accordance with and comply with the acceptance criteria of NFPA 285.

Exceptions:



1. One-story buildings complying with Section 2603.4.1.4.
2. Wall assemblies where the foam plastic insulation is covered on each face by not less than 1-inch (25 mm) thickness of masonry or concrete and meeting one of the following:
  - 2.1. There is no airspace between the insulation and the concrete or masonry.
  - 2.2. The insulation has a flame spread index of not more than 25 as determined in accordance with ASTM E84 or UL 723 and the maximum airspace between the insulation and the concrete or masonry is not more than 1 inch (25 mm).

**Chapter 35, REFERENCED STANDARDS, is amended as follows:**

*Amend Chapter 35, REFERENCED STANDARDS, of the Building Code to read as follows:*

*Strike the Standard Reference Number ASTM/E 84-09 and insert the new Standard Reference Number ASTM/E 84-2013A in its place and add code references 1403.5 and 2603.5.5 to this entry; and further, strike the Standard Reference Number ASTM/E 1354-09 and insert the new Standard Reference Number ASTM/E 1354-2013 in its place and add code reference 1403.5 to this entry, to read as follows:*

<b>ASTM</b>	ASTM International 100 Barr Harbor Drive West Conshohocken, PA 19428-2959	
Standard Reference Number	Title	Referenced in code section number
<del>E-84-09</del> <u>E84-2013A</u>	Test Methods for Surface Burning Characteristics of Building Materials.	202, 402.6.4.4, 406.7.2, 703.5.2, 720.1, 720.4, 803.1.1, 803.1.4, 803.9, 803.13, 806.5, 1404.12.1, 1407.9, 1407.10.1, 1409.9, 1409.10.1, 1509.6.2, 1509.6.3, 2303.2, 2603.3, 2603.4.1.13, 2603.7, 2604.2.4, 2606.3.5.4, 2606.4, 2613.3, 3105.3, <u>1403.5</u> , <u>2603.5.5</u>

<del>E 1354—09</del> <u>E1354-2013</u>	Standard Test Method for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter	424.2, <u>1403.5</u>
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*Amend the entry for Standard Reference Number UL/723-2008 to read as follows:*

<b>UL</b>	Underwriters Laboratories, Inc. 333 Pfingsten Road Northbrook, IL 60062-2096	
Standard Reference Number	Title	Referenced in code section number
<del>723—2008</del>	Standard for Test for Surface Burning Characteristics of Building Materials	202, 402.6.4.4, 406.7.2, 703.5.2, 720.1, 720.4, 803.1.1, 803.1.4, 803.9, 803.13, 806.5, 1404.12.1, 1407.9, 1407.10.1, 1409.9, 1409.10.1, 1509.6.2, 1509.6.3, 2303.2, 2603.3, 2603.4.1.13, 2606.3.5.4, 2603.7, 2604.2.4, 2606.4, 2613.3, 3105.3, <u>1403.5, 2603.5.5</u>

*Strike the entry for Standard Reference Number NFPA 285-06 in its entirety and insert an entry for new Standard Reference Number NFPA 285-12 in its place, to read as follows;*

<b>NFPA</b>	National Fire Protection Association 1 Batterymarch Park Quincy, MA 02169-7471	
Standard Reference Number	Title	Referenced in code section number
<del>285—06</del> <u>285-12</u>	<u>Standard Fire Test Method for the Evaluation of Fire Propagation Characteristics of Exterior Nonload-bearing Wall Assemblies Containing Combustible Components</u> <del>Standard Method of Test for</del>	718.2.6, 1407.10.4, 1409.10.4, 1509.6.2, 1403.5, 2603.5.5

	the Evaluation of Flammability Characteristics of Exterior Nonload bearing Wall Assemblies Containing Combustible Components	
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All persons desiring to comment on these proposed regulations should submit comments in writing to Jill Stern, Chairperson, Construction Codes Coordinating Board, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, S.W., Room 5100, Washington, D.C. 20024, or via e-mail at [jill.stern@dc.gov](mailto:jill.stern@dc.gov), not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-8944. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2017 Supp.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the intent to adopt, on an emergency basis, an amendment to Section 903 of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled “Outpatient and Emergency Room Services.”

The effect of these rules is to extend the provision of supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program for outpatient hospital services rendered through September 30, 2018.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance (“State Plan”) requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The Council has approved the State Plan through the Fiscal Year 2018 Budget Support Act of 2017, signed July 31, 2017 (D.C. Act 22-130; 64 DCR 7652 (August 11, 2017)). The estimated annual increase in aggregate expenditures associated with the State Plan amendment is \$ 17,932,860. These rules shall become effective for outpatient hospital services provided by Medicaid participating hospitals located within the District of Columbia occurring on or after: (1) October 1, 2017, if the corresponding State Plan amendment has been approved by CMS with an effective date of October 1, 2017; or (2) the effective date established by CMS in its approval of the corresponding State Plan amendment, whichever is later. If approved, DHCF will publish a notice which sets forth the effective date of the rules.

Emergency action is necessary to ensure that hospitals participating in the District Medicaid program are able to continue delivering critically important healthcare services to vulnerable District Medicaid beneficiaries on an outpatient basis without interruption.

The Director adopted these emergency rules on September 19, 2017, and they shall become effective on October 1, 2017 subject to CMS approval of the corresponding State Plan. These emergency rules shall remain in effect for one hundred and twenty (120) days past adoption date, until January 17, 2018, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

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

**Subsection 903.31 of Section 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, is amended as follows:**

903.31 Beginning FY 2018, each eligible hospital shall receive a supplemental hospital access payment calculated as set forth below:

- (a) For visits and services beginning October 1, 2017 and ending on September 30, 2018, quarterly access payments shall be made to each eligible private hospital. Each payment shall be an amount equal to each hospital's District Fiscal Year (DFY) 2015 outpatient Medicaid payments divided by the total in District private hospital DFY 2015 outpatient Medicaid payments multiplied by one quarter (1/4) of the total outpatient private hospital access payment pool. The total outpatient private hospital access payment pool shall be equal to the total available spending room under the private hospital outpatient Medicaid upper payment limit for DFY 2018;
- (b) For visits and services beginning October 1, 2017 and ending on September 30, 2018, quarterly access payments shall be made to the United Medical Center as follows: (1) Each payment shall be equal to one quarter (1/4) of the total outpatient public hospital access payment pool; and (2) The total outpatient public hospital access payment pool shall be equal to the total available spending room under the District-operated hospital outpatient Medicaid upper payment limit for DFY 2018;
- (c) Payments shall be made fifteen (15) business days after the end of the quarter for the Medicaid visits and services rendered during that quarter; and
- (d) For purposes of this section, the term District Fiscal Year shall mean dates beginning on October 1st and ending on September 30th.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director and State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900 South, Washington D.C. 20001, via telephone at (202) 442-8742, via email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND SECOND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2017 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Section 947, entitled “Private Duty Nursing Services,” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Private Duty Nursing services are nursing services for technology-dependent beneficiaries who require more individualized and continuous care than is available from a visiting nurse under the Skilled Nursing Home Health Services benefit or is routinely provided by nursing staff from a hospital or skilled nursing facility.

The current District of Columbia State Plan for Medical Assistance (State Plan) does not specify the details for provider requirements, or service delivery for Private Duty Nursing Services. To date, there have been no rules governing Private Duty Nursing Services under the State Plan.

These emergency and second proposed rules establish general standards governing reimbursement for Private Duty Nursing services provided to beneficiaries under the District of Columbia State Plan for Medical Assistance (State Plan) and establish specific conditions of participation for providers of these services. These rules also clarify prior authorization requirements and establish higher reimbursement rates for delivering Private Duty Nursing Services. DHCF determined that the existing provider reimbursement rates were not sufficient to ensure an adequate supply of providers willing and able to provide Private Duty Nursing Services to District Medicaid beneficiaries.

Emergency action is necessary in order to preserve the health and safety of vulnerable District residents who would face institutionalization without Medicaid-funded Private Duty Nursing services by ensuring that DHCF can secure and retain an adequate supply of qualified providers of these critically important services for technology-dependent beneficiaries.

Private Duty Nursing services provide care to some of the most vulnerable Medicaid beneficiaries who are technology-dependent. A technology-dependent beneficiary is a beneficiary who is dependent on ventilator equipment or other life-sustaining technology and requires constant nursing supervision, visual assessment, and monitoring. Private duty nursing services are provided to those technology-dependent beneficiaries who need more individualized and continuous care due to an illness or injury than what may be provided under the Skilled Nursing State Plan benefit. The information previously contained in the State Plan, in combination with the absence of a related rulemaking, has contributed to inconsistent quality of care and has hampered DHCF’s ability to hold providers accountable for care delivery and

provide effective oversight. Additionally, the rate increases proposed in this rulemaking are needed to enable Home Health service providers to hire and retain staff to ensure continued access to Private Duty Nursing services under the State Plan.

The corresponding amendment to the State Plan must be approved by the U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS). The State Plan Amendment (SPA) was approved by the Council of the District of Columbia (Council) through the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-0036; 62 DCR 10905). Implementation of these proposed rules is contingent upon approval of the corresponding State Plan Amendment (SPA) by CMS, with an effective date of September 1, 2017 or the effective date established by CMS in its approval of the corresponding SPA, whichever is later. The District is proposing new reimbursement rates for Private Duty Nursing services. The increase in aggregate expenditures related to the update in the reimbursement rates is approximately \$ 170,274 for FY 2017 and \$ 2,094,365 for FY 2018..

A Notice of Proposed Rulemaking was published in the *D.C. Register* on July 15, 2016 at 63 DCR 009539. No comments were received in response to the Notice of Proposed Rulemaking. However, DHCF is issuing these emergency and second proposed rules in order to make changes related to: the definition of “technology-dependent;” the criteria for exceeding the twelve (12) hour per day service limitation; the reimbursement structure for Private Duty Nursing assessments; reassessments and supervisory nurse visits; and the service limitations applicable to concurrent delivery of Private Duty Nursing and personal care aide services. These changes are being made as a result of discussions with both internal and external stakeholders regarding implementation of these services, and will assist beneficiaries, providers and advocates by clarifying various aspects of service delivery for Private Duty Nursing.

The first change was made in §§ 947.4 and 947.5 as a result of discussions with internal and external stakeholders to clarify the definition of the term “technology-dependent” and provide increased guidance for physicians ordering these services. The second change was made to § 947.28 to clarify the criteria based on which authorization may be obtained for services exceeding the twelve (12) hour per day limitation. The third change was made to § 947.34 to reflect a revision to the proposed reimbursement structure for initial assessments, reassessments and supervisory nursing visits. The reimbursement structure for these visits will be revised from a per-unit to a per-visit structure based on extensive discussions with the provider community regarding the feasibility of billing in fifteen (15) minute increments for these visits and the activities that a Registered Nurse performs during the visits. The final change was made to § 947.37 to clarify the circumstances under which Medicaid reimbursement may be provided for the concurrent delivery of Private Duty Nursing and personal care aide services.

These emergency rules were adopted on September 19, 2017 and shall become effective for services rendered beginning September 1, 2017 if the corresponding SPA has been approved by CMS with effective date of September 1, 2017 or the effective date established by CMS in its approval of the corresponding SPA, whichever is later. These rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until January 17, 2018, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

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

**A new Section 947, PRIVATE DUTY NURSING SERVICES, is added to read as follows:**

**947 PRIVATE DUTY NURSING SERVICES**

- 947.1 This section shall establish general standards for conditions of participation for Medicaid providers of Private Duty Nursing services, and delineate specific standards governing reimbursement for these services.
- 947.2 Private Duty Nursing services are services for technology-dependent beneficiaries as defined in Subsection 947.5. These beneficiaries require more individualized and continuous care than is available from a visiting nurse under the Skilled Nursing Home Health Services benefit available under the State Plan for Medical Assistance, or routinely provided by nursing staff in a hospital or skilled nursing facility.
- 947.3 In order to be eligible for Medicaid reimbursement, Private Duty Nursing services must be ordered by a physician and provided at the beneficiary's residence in accordance with a plan of care developed by a Registered Nurse (R.N.).
- 947.4 A beneficiary shall be eligible for Medicaid reimbursement of Private Duty Nursing services if he or she is in receipt of the following:
- (a) An order for Private Duty Nursing services from the beneficiary's physician certifying that the services are medically necessary in accordance with the requirements set forth in this section; and
  - (b) A prior authorization from the Department of Health Care Finance (DHCF) or its designee in accordance with the requirements set forth in this section.
- 947.5 Private Duty Nursing services shall be considered medically necessary only if a beneficiary is technology-dependent. A beneficiary shall only be considered technology-dependent if the beneficiary meets the following criteria:
- (a) The beneficiary is dependent on ventilator equipment or other life-sustaining technology; and
  - (b) Constant nursing supervision, visual assessment, and monitoring of both the beneficiary and the technology is required.



- 947.6 In order to be reimbursed by Medicaid, an order for Private Duty Nursing services shall be signed by a physician knowledgeable about the beneficiary's needs and conditions, and shall state the amount, frequency, scope and duration of Private Duty Nursing services ordered. The physician's signature on the order constitutes a certification by the physician that the services ordered reflect the health status and needs of the beneficiary, and that the beneficiary is technology-dependent and eligible for the service.
- 947.7 For all Medicaid reimbursable Private Duty Nursing services, the ordering physician shall:
- (a) Document that a face-to-face encounter, related to the primary reason the beneficiary requires Private Duty Nursing services, occurred between the beneficiary and the health practitioner, as defined in Subsection 947.8, within the ninety (90) days before or within the thirty (30) days after the start of services; and
  - (b) Indicate on the order the name of the practitioner who conducted the face-to-face encounter, and the date of the encounter.
- 947.8 The face-to-face encounter required to provide Medicaid reimbursement of Private Duty Nursing services must be related to the primary reason the beneficiary requires Private Duty Nursing services and may be conducted by one of the following health practitioners:
- (a) The ordering physician;
  - (b) A nurse practitioner working in collaboration with the physician;
  - (c) A certified nurse mid-wife as authorized under District law;
  - (d) A physician assistant acting under the supervision of the ordering physician; or
  - (e) The attending acute or post-acute physician.
- 947.9 The attending acute or post-acute physician shall only conduct face-to-face encounters for those beneficiaries receiving Private Duty Nursing services immediately after an acute or post-acute stay.
- 947.10 The plan of care referenced in Subsection 947.3 shall be developed and signed by an R.N. who is employed or under contract to the Private Duty Nursing services provider. The signature of the R.N. on the plan of care constitutes a certification that the plan of care accurately reflects the health status and needs of the beneficiary and that the services identified in the plan of care are in accordance with the physician's order defined in Subsection 947.6.
- 947.11 The beneficiary's physician shall approve the initial plan of care by signing it within thirty (30) days of the development of the plan of care, and noting his or

her license number and National Provider Identification number on the plan of care.

- 947.12 The plan of care shall be reviewed and signed by the physician every sixty (60) calendar days.
- 947.13 The signature of the physician on an initial or subsequent plan of care constitutes a certification that the plan of care accurately reflects the health status and needs of the beneficiary.
- 947.14 Medicaid reimbursable Private Duty Nursing services shall be provided by a Home Care Agency that meets the requirements of Subsection 947.15.
- 947.15 In order to be eligible for Medicaid reimbursement, a Home Care Agency providing Private Duty Nursing services shall meet the following requirements:
- (a) Be enrolled as a Medicare Home Care Agency qualified to offer skilled nursing services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 CFR § 484;
  - (b) Have sufficient funds or “initial reserve operating funds” available for business expenses determined in accordance with federal special capitalization requirements for home care agencies participating in Medicare as set forth under 42 CFR § 489.28;
  - (c) Meet the District of Columbia Department of Health licensure requirements in accordance with Chapter 39 of Title 22-B DCMR;
  - (d) Be enrolled as a Medicaid provider of Private Duty Nursing services and meet all requirements as set forth under Chapter 94 (Medicaid Provider and Supplier, Screening, Enrollment, and Termination) of Title 29 DCMR; and
  - (e) Have a surety bond, in accordance with federal requirements for home care agencies participating in Medicaid as set forth under 42 CFR § 441.16 and Subsection 947.15.
- 947.16 Except for government-operated Home Care Agencies, each Home Care Agency that is a Medicaid participating Home Care Agency or that seeks to become a Medicaid participating Home Care Agency shall:
- (a) Obtain a fifty thousand dollar (\$50,000) surety bond that meets the requirements as set forth under 42 CFR § 441.16; and
  - (b) Furnish a copy of the surety bond to DHCF.
- 947.17 In accordance with the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (D.C. Law 5-48, D.C. Official Code §§

44-501 *et seq.*), and 22-B DCMR § 3924, a Home Care Agency shall accept a ventilator-dependent beneficiary only if:

- (a) The beneficiary is ventilator stabilized;
- (b) A successful home equipment trial has been conducted by the Home care Agency provider; and
- (c) The Home Care Agency has developed a plan for emergency services notification.

947.18 Medicaid reimbursable Private Duty Nursing services shall be provided by an R.N. or licensed practical nurse (L.P.N.) licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules.

947.19 Medicaid reimbursable Private Duty Nursing services shall be responsible for the following duties:

- (a) Conducting initial assessments and periodic reassessments every sixty (60) calendar days to develop and update a plan of care;
- (b) Coordinating the beneficiary's care and referrals among all Home Care Agency providers;
- (c) Implementing preventive and rehabilitative nursing procedures;
- (d) Administering medications and treatment as prescribed by a licensed physician, pursuant to the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as outlined under the plan of care;
- (e) Recording daily progress notes and summary notes at least once every sixty (60) calendar days;
- (f) Making necessary updates to the plan of care, and reporting any changes in the beneficiary's condition to his or her physician;
- (g) Instructing the beneficiary on treatment regimens identified under the plan of care;
- (h) Updating the physician on changes in the beneficiary's condition and obtaining orders to implement those changes; and

- (i) For R.N.s who supervise nursing services delivered by skilled nurses and services delivered by Home Health Aides and Personal Care Aides, duties shall include, at minimum, the following:
  - (i) Supervising the beneficiary's skilled nurse and aide on site, at least once every sixty (60) calendar days;
  - (ii) Ensuring that new or revised physician orders have been obtained from the treating physician initially, as needed, and every sixty (60) calendar days thereafter, to promote continuity of care;
  - (iii) Reviewing the beneficiary's plan of care;
  - (iv) Monitoring the beneficiary's general health outcomes, including taking vital signs, conducting a physical examination, and determining mental status;
  - (v) Determining if the beneficiary has any unmet needs;
  - (vi) Ensuring that all home health services are provided safely and in accordance with the plan of care;
  - (vii) Ensuring that the beneficiary has received education on any needed services;
  - (viii) Ensuring the safe discharge or transfer of the beneficiary;
  - (ix) Ensuring that the physician receives progress notes when the beneficiary's health condition changes, or when there are deviations from the plan of care;
  - (x) Ensuring that a summary report of the visit has been sent to the physician every sixty (60) calendar days; and
  - (xi) Reporting any instances of abuse, neglect, exploitation or fraud to DHCF to promote a safe and therapeutic environment in accordance with 17 DCMR § 5414.
- (j) Maintaining the beneficiary's equipment and supplies;
- (k) Providing ventilator and/or tracheostomy tube maintenance;
- (l) Applying independent emergency measures to counteract adverse developments; and

- (m) Updating the physician on changes in the beneficiary's condition and obtaining orders to implement those changes.
- 947.20 Initial assessments and periodic reassessments shall only be conducted by an R.N. The Private Duty Nurse conducting an initial assessment or periodic reassessment in accordance with this section shall certify in writing that the assessment is true and accurate.
- 947.21 Consistent with the Department of Health regulations at 22-B DCMR § 3917, Private Duty Nursing provided by an L.P.N. shall be supervised by an R.N.
- 947.22 When an L.P.N. provides Private Duty Nursing services, the duties shall not include supervisory duties.
- 947.23 In order to be eligible for Medicaid reimbursement, the R.N. shall monitor and supervise the provision of services provided by the L.P.N. or R.N., including conducting a site visit at least once every sixty (60) calendar days, or more frequently, if specified in the beneficiary's plan of care.
- 947.24 Progress notes during each visit shall meet the standards of nursing care established under 17 DCMR §§ 5414 and 5514, and include notations regarding the following:
- (a) Any unusual health or behavioral events or changes in status;
  - (b) Any matter requiring follow-up on the part of the service provider or DHCF; and
  - (c) A clearly written statement of the beneficiary's progress or lack of progress, medical conditions, functional losses, and treatment goals as outlined in the plan of care that demonstrates that the beneficiary's services continue to be reasonable and necessary.
- 947.25 The nurse shall prepare summary notes every sixty (60) calendar days which summarizes the daily progress notes and bring attention to any matter requiring follow-up on the part of the service provider or DHCF.
- 947.26 Private Duty Nursing services shall be reimbursed by Medicaid for up to twelve (12) hours a day with a prior authorization issued by DHCF, in accordance with the requirements set forth under Subsection 947.27. Beneficiaries may also qualify for additional hours if they meet the requirements referenced under Subsection 947.28.
- 947.27 In order to be eligible for Medicaid reimbursement, all requests for Private Duty Nursing services shall be prior authorized by DHCF or its designee. Prior authorization shall be determined by ensuring that the beneficiary meets the following criteria:

- (a) The beneficiary is technology-dependent, as set forth in Subsection 947.5; and
  - (b) The beneficiary requires services by an R.N. or L.P.N. on a more individualized and continuous basis which cannot be provided at a lower level of care, pursuant to the Skilled Nursing Home Health Services benefit available under the State Plan for Medical Assistance.
- 947.28 DHCF may authorize additional hours of Medicaid reimbursable Private Duty Nursing services above the twelve (12) hour per day limit for a beneficiary if DHCF determines that:
  - (a) Additional hours are medically necessary, as set forth in Subsection 947.5;
  - (b) That the beneficiary's needs can be safely met in the home; and
  - (c) That the beneficiary's Medicaid-funded services are being delivered in a cost-effective manner appropriate to the beneficiary's level of care.
- 947.29 DHCF shall perform audits to ensure that Medicaid payments are consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing Medicaid.
- 947.30 The audit process shall be routinely conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid. These audits shall be conducted on-site or through an off-site, desk review.
- 947.31 Each provider shall allow access to relevant records and program documentation upon request and during an on-site audit or review by DHCF, other District of Columbia government officials and representatives of the United States Department of Health and Human Services.
- 947.32 Each provider shall maintain complete and accurate records reflecting the specific Private Duty Nursing services provided to each beneficiary for each unit of service billed. Such records shall be maintained for a period of ten (10) years or when all audits have been completed, whichever is longer.
- 947.33 The Medicaid reimbursement rate for Private Duty Nursing services shall be fifteen dollars (\$15.00) for each fifteen (15) minute unit of service for services provided by an R.N., and twelve dollars and fifty cents (\$12.50) for each fifteen (15) minute unit of service provided by a L.P.N.
- 947.34 The Medicaid reimbursement rate for an initial assessment, reassessment or supervisory visit by an R.N. is a flat rate of one hundred and twenty dollars (\$120).
- 947.35 In order to bill for a fifteen (15) minute unit of Private Duty Nursing services, a provider shall ensure that documentation of the visit shows Private Duty Nursing

services were provided for at least eight (8) minutes during the fifteen (15) minute unit.

947.36 Medicaid reimbursable Private Duty Nursing services shall have the following service limitations:

- (a) Assessments, reassessments or supervisory visits of a skilled nurse or aide shall not be included in the calculation of the daily Private Duty Nursing cap;
- (b) When a private duty nurse performs the duties described under Subsection 947.19 (b) – (h), and (j)- (m) during an initial assessment, reassessment, or supervisory visit, these services shall not be billed separately as Private Duty Nursing services under the twelve hour (12) daily cap, but shall be included as part of the rate paid for an initial assessment, reassessment, or supervisory visit; and
- (c) When a private duty nurse provides assistance with activities of daily living during an assessment, or supervisory, or Private Duty Nursing visit, the Home Care agency shall ensure that activities performed during the assessment, supervisory, or Private Duty Nursing visit are only billed as Private Duty Nursing services and may not also be billed as personal care aide services.

947.37 DHCF shall not reimburse a home care agency for concurrent delivery of Private Duty Nursing and personal care aide services unless the home care agency is able to demonstrate that concurrent services are necessary in order to maintain the beneficiary's health and safety, as determined by DHCF.

947.38 In order to receive Medicaid reimbursement for Private Duty Nursing services, a beneficiary shall not concurrently receive Skilled Nursing services under the State Plan.

**Section 999, DEFINITIONS, § 999.1, is amended to include the following terms:**

**Order** – A formal, written instruction signed by a physician regarding a beneficiary's medical care, treatment or management which specifically requests the provision of a specific service.

**Plan of Care** - A written document developed by the R.N. hired by the home health provider that delineates the various treatments of the beneficiary.

**Surety bond** - One or more bonds issued by one or more surety companies under 31 USC 9304 to 9308 and 31 CFR parts 223, 224, and 225.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, N.W., Suite 900 South, Washington D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.



## 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 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 (2016 Repl. and 2017 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to repeal Chapter 51 (Medicaid Reimbursement for Services Provided by Home Health Aides) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR) and to create a new Chapter 99, entitled “Home Health Services,” of Title 29 DCMR.

Home Health services consist of a variety of services including skilled nursing, home health aide, physical therapy, occupational therapy, durable medical equipment, prosthetics, orthotics and supplies, and speech pathology and audiology services. All of these services are delivered in a beneficiary’s place of residence or a setting in which normal life activities take place with the goal of maintaining a beneficiary’s general health outcomes. Home Health services are provided to some of the most vulnerable Medicaid beneficiaries. Several factors have contributed to inconsistent quality of care and limited DHCF’s ability to effectively oversee and hold providers accountable for these services, including limited State Plan guidance, the absence of Skilled Nursing and therapy-related rules defining the services, and a lack of specificity in provider qualifications and billing requirements.

These emergency and proposed rules establish standards for Medicaid reimbursement of Home Health services that correlate to a proposed State Plan Amendment (SPA) that will update the amount, duration and scope of Home Health service delivery and implement new provider payment rates for Skilled Nursing services.

Skilled Nursing services rates have not kept pace with market rates in recent years, and have created access issues for some beneficiaries. DHCF is proposing this emergency rate increase and updated oversight standards to ensure that an adequate supply of qualified providers will be available to provide skilled nursing services to District Medicaid beneficiaries. Emergency adoption of this proposed rule is needed to protect the health and safety of District residents to ensure that Home Health service providers can hire and retain qualified staff, which will afford access to skilled nursing services authorized under the State Plan. Further, these rules include new federal standards that require face-to-face encounters between the ordering health practitioner and the beneficiary before Home Health services are delivered.

Emergency adoption is also required in order to ensure that providers of Home Health Aide services are compensated in accordance with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2016 Repl.)). The provisions of these rules reflecting increased compensation for providers of Home Health Aide services in

accordance with the Living Wage Act are not contingent upon approval of the corresponding SPA.

The new federal standards have resulted in Chapter 51 (Medicaid Reimbursement for Services Provided by Home Health Aides) containing outdated information for providers and beneficiaries of Home Health Aide services. As the revised standards governing provider qualifications, eligibility requirements, service descriptions and delivery parameters, and reimbursement for Home Health Aide services have been incorporated into the new chapter created through these emergency and proposed rules, DHCF is repealing Chapter 51 in its entirety.

The corresponding SPA requires approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The SPA was approved by the Council of the District of Columbia (Council) 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 Notice of Emergency and Proposed Rulemaking was adopted on , and will become effective for dates of services rendered on or after September 1, 2017, if the corresponding SPA has been approved by CMS with an effective date of September 1, 2017 or the effective date established by CMS, whichever is later. The emergency rules shall remain in effect not longer than one hundred and twenty days (120) from the adoption date or until , unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The aggregate fiscal impact of the corresponding State Plan Amendment will be approximately seven hundred four thousand, one hundred forty-four dollars (\$ 704,144) in Fiscal Year 2017 and eight million, four hundred forty-nine thousand, seven hundred twenty-four dollars (\$ 8,449,724) in Fiscal Year 2018.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on February 17, 2017 at 64 DCR 001872. Comments were received on the initial emergency and proposed rulemaking from the following organizations: Disability Rights DC at University Legal Services (DRDC), Legal Counsel for the Elderly (LCE), the DC Home Health Association, Premier Health Services, Health Management, Inc., Berhan Home Health Services, and the Surety and Fidelity Association of America. DHCF carefully considered all comments submitted, as described below:

### **Sixty (60) Day Reassessment Period**

Both DRDC and LCE submitted comments regarding the sixty (60) day reassessments required for all home health services. Disability Rights DC asserted that the regulations impose an onerous sixty (60) day reassessment requirement for skilled nursing services and home health aide services that would unduly burden beneficiaries and their physicians and stated that DRDC is extremely concerned that the proposed sixty (60) day reassessment requirement will have a negative impact on beneficiaries' continuity of care. To avoid disruptions to beneficiaries' services, DRDC urged DHCF to incorporate the twelve (12) month reassessment requirements established under 29 DCMR § 5006.2. Furthermore, DRDC recommended that the regulations include language that permits DHCF to extend the reassessment and renewal period to align with beneficiaries' Medicaid recertification date. LCE stated that early reassessments would still be appropriate in cases where beneficiaries experience significant changes in their health conditions.

LCE stated that although it has some concerns over the requirement that a reassessment and doctor's order must be obtained every sixty (60) days, it agrees with placing direct responsibility on the supervising Registered Nurse (RN) to obtain the physician's order. LCE believes the regulations are less clear with regard to responsibility for conducting reassessments and review of the care plan. It recommended that the regulations specify that the supervisory nurse also conduct the reassessment, to facilitate the nurse's communication with the physician for the updated orders. It also stated that the supervisory nurse is the best person to review the care plan.

LCE stated that it represents older clients, unlikely to improve, who have received skilled nursing services for an extended period of time and that the services are necessary for the individuals to remain in the community and not be institutionalized. LCE stated that it would be burdensome for these beneficiaries to be reassessed every sixty (60) days and suggested an exceptions process for the long-term recipients whose condition is unlikely to change. LCE asserted that requiring a reassessment and certification by a physician every sixty (60) days for home health aide services appears burdensome for residents and could result in gaps in care. It recommended that Chapter 99 follow the regulations for personal care aides within 29 DCMR § 5006.2, which contain a twelve (12) month reassessment requirement.

While DHCF acknowledges the concerns raised by both DRDC and LCE, the sixty (60) day re-evaluation process is required by federal law for all Medicaid home health services, as reflected in 42 CFR § 440.70. The Department of Health (DOH) also requires re-evaluation of the need for all skilled services every sixty (60) days, as reflected in 22-B DCMR § 3916. Therefore, DHCF cannot adjust this timeframe.

Home health services are distinct from long-term care services, such as personal care aide services. As set forth in §§ 9901.1 and 9902.1, skilled nursing and home health aide services offered under the State Plan home health benefit are offered on a "part-time or intermittent basis," in accordance with the federal requirements of 42 CFR § 440.70. These services are not furnished based on a beneficiary meeting an institutional level of care. Rather, these services are intended to rehabilitate patients from an illness or injury at home rather than in a facility setting.

DHCF recognizes that many current recipients of State Plan skilled nursing services are Home and Community Based Services Waiver for the Elderly and Persons with Physical Disabilities (EPD Waiver) beneficiaries, as skilled nursing services are not currently offered as an EPD Waiver service. The "reassessment" of the need for skilled nursing or home health aide services that is required every sixty (60) days is not equivalent to the assessment process conducted to determine a beneficiary's clinical eligibility for the EPD Waiver. For home health services, the initial assessment (on which the initial plan of care is based) and reassessments (based on which the plan of care is updated) are conducted by an RN employed by the home health agency, as described in § 9901.6.

### **Beneficiary Rights**

DRDC raised concerns regarding the repeal of 29 DCMR § 5108 and urged DHCF to restore and incorporate the “Patient Rights and Responsibilities” language formerly contained in Section 5108 in its entirety. DHCF appreciates and shares DRDC’s concern regarding preserving the rights of beneficiaries receiving home health aide services. The content of the former 29 DCMR § 5108 was duplicative of the current language in DOH regulations at 22-B DCMR § 3912. As compliance with 22-B DCMR § 3912 is a requirement of participation in the District Medicaid for home health agencies, all home health agencies providing home health aide services under the State Plan are already held to the requirements contained in this section. Therefore, DHCF does not believe any additional requirements are needed.

### **Surety Bond Requirements**

The Surety and Fidelity Association of America noted that § 9901.3 requires a home health agency that seeks to become a Medicaid participating agency to furnish a \$50,000 surety bond and applauded DHCF for establishing a surety bond requirement as part of the regulatory scheme. The association stated that bonds are an effective means to ensure that only qualified and well-capitalized home health agencies are eligible to participate in the Medicaid program. However, the association asserted that the proposed requirement provides little detail regarding the scope of coverage required under the bond, except that the bond must meet the requirements of 42 CFR § 441.16. The association recommended that DHCF develop a standard form that is used by all home health care agencies, noting that a standard form provides assurance that all home health agencies are providing bonds that provide coverage on the same basis and to the extent required under § 9901.3. The association asserted that if home health agencies are permitted to draft their own forms, DHCF staff will need to review each form to confirm that it is in compliance with the coverage requirements and that a standard DHCF bond form is the most efficient means to ensure consistency of coverage. The association offered to work with DHCF in developing a bond form that meets DHCF’s interests and would be available to qualified home health agencies.

DHCF appreciates the commenter’s concern regarding consistency of coverage among bonds furnished by home health agencies and its offer to create a standard bond form for home health agencies subject to this regulatory requirement. The federal requirement incorporated by reference in these rules, found at 42 CFR § 441.16, contains extensive and specific language governing the parties to the bond, authorized sureties, the amount, type and term of the bond, and other additional requirements. As DHCF already has an established process to review the bonds submitted by home health agencies and ensure that the bonds furnished meet all federal requirements, DHCF does not believe that development of an additional form is necessary at this time.

### **Home Health Aide Duties**

DRDC, LCE, and Premier Health Services all submitted comments with regard to allowable tasks for home health aides. DRDC asserted that § 9902 failed to incorporate tasks such as medication administration, respiratory care, and treatment of decubitus ulcers, which are vital to

enable many people with disabilities to live in the community rather than in nursing facilities, as intended under the American with Disabilities Act (ADA). DRDC also stated that the revisions to § 9902.4 do not include administration of medications by injection, G-tube, and other methods, and thereby fail to address the routine needs of people with diabetes, among others. DRDC recommended that DHCF incorporate the training for medication administration on the job, pursuant to nurse delegation, as outlined in 17 DCMR Ch. 93.

LCE stated that the services provided by home health aides should be expanded to include tasks, such as medication management and respiratory care, which are necessary for beneficiaries to remain in their homes and strongly recommended training for home health aides for medication administration and any other expanded services. Premier stated that Home Health Aides are not licensed to do clinical tasks as clinical tasks are performed by licensed clinicians. Premier further asserted that the following tasks listed in § 9902.4 are not contained within the list of allowable tasks in DOH regulations governing home health aides: (1) emptying and changing colostomy bags and performing stoma care, (2) cleaning around a gastrostomy tube site, (3) administering an enema, and (4) assisting with oxygen therapy.

DHCF acknowledges the commenters' concerns regarding allowable tasks for home health aides. However, DHCF cannot allow home health aides to perform any tasks outside of the tasks set forth by DOH in its regulations.

DHCF acknowledges that 17 DCMR § 9315(s) currently includes the following among tasks that may be performed by home health aides: "Administer medications, provided that the home health aide has received the medication administration training and obtained certification as a medication aide." However, the current DOH regulations regarding trained medication employees, found in Chapter 61 of Title 17 DCMR, only addresses the administration of medications to individuals with developmental disabilities participating in specific programs. Therefore, until DOH issues final amended or separate regulations governing the administration of medications by home health aides to other populations, DHCF cannot allow home health aides providing services under the State Plan home health services benefit to administer medications.

DHCF based its allowable tasks for home health aides on 17 DCMR § 9315, which does include each of the tasks listed by Premier Home Health Services.

### **Timeframe for Initiation of Services**

DRDC urged DHCF to restore the provision formerly outlined in 29 DCMR § 5104 establishing a maximum timeframe of forty-eight (48) hours for the start of home health services following completion of the initial assessment. DHCF agrees with the commenter that these rules should establish a timeframe for the initiation of Home Health Aide services. Therefore, DHCF has amended the rules to include a requirement for the initiation of Home Health Aide services within twenty-four (24) hours of completion of the beneficiary's plan of care, in order to maintain consistency with requirements for the initiation of personal care aide services.

### **Integration of PCSP for EPD Beneficiaries**

LCE noted that it is important for all home health services care plans for EPD Waiver beneficiaries to include the beneficiary's EPD Waiver Person-Centered Service Plan. While these regulations govern the State Plan home health services benefit, DHCF acknowledges that some EPD Waiver beneficiaries receive State Plan skilled nursing services, as skilled nursing is not currently an EPD Waiver service. Therefore, DHCF has amended § 9901.5(i)(3) as follows: "Reviewing the beneficiary's plan of care, including ensuring integration of the Person-Centered Service Plan (PCSP) for EPD Waiver beneficiaries into the plan of care."

### **Physician Signature on Plan of Care**

Premier stated that it is currently challenging to obtain a timely signed plan of care from physicians, as evidenced by the challenges that providers and Delmarva are having, and that it would be extremely difficult to obtain a physician's signature and the physician's notation of a license number and National Provider Identifier (NPI) on the plan of care,. This would lead to further delays of beneficiaries obtaining services. The requirement for a physician's signature on the initial and all updated plans of care is a federal requirement found at 42 CFR § 440.70. Therefore, DHCF cannot change this requirement. DHCF notes that the physician's signature on the plan of care is also required for personal care aide services, as reflected at 29 DCMR § 5005.

### **Thirty-six (36) Visit Annual Service Limitation**

Premier requested that DHCF clarify §§ 9900.15, 9903.7 and 9904.7 because Premier felt that the provisions contain conflicting language regarding service limitations. Furthermore, Premier noted that there is currently no system in place to track the thirty-six (36) visit annual service limitation proposed in the initial emergency and proposed rules,. This would make it difficult for providers of these services to know how many visits a beneficiary has had during a given year, particularly if a beneficiary has multiple providers of home health services.

As set forth in § 9900.15, the thirty-six (36) visit per year service limitation proposed in the initial rulemaking was only applicable to Physical Therapy, Occupational Therapy, and Speech Pathology and Audiology services provided under the State Plan home health services benefit. Neither Skilled Nursing services nor Home Health Aide services was included in the thirty-six (36) visit per year limitation.

However, following further discussion with internal and external stakeholders, DHCF has determined that the thirty-six (36) visit limitation for these services could prove administratively burdensome for providers and beneficiaries and difficult for DHCF to administer accurately. Therefore, in these second emergency and proposed rules, DHCF has removed the thirty-six (36) visit per year limitation for Physical Therapy, Occupational Therapy, and Speech Pathology and Audiology services. Instead, DHCF has created a uniform prior authorization requirement for all services provided under the State Plan home health services benefit.

### **Skilled Nursing Services Definition**

Premier stated that some Skilled Nursing services are provided around the clock and continuously, due to the nature of the client's illness e.g. ventilator dependent, tracheotomy, gastrostomy tube, Premier asked whether the proposed thirty-six (36) visit service limitation would be applicable in such cases. Beneficiaries who are technology-dependent such as the patients described by Premier would be appropriate for Private Duty Nursing services offered as a separate State Plan benefit. Furthermore, as noted above, the initial rulemaking did not propose a thirty-six (36) visit service limitation for Skilled Nursing services.

### **Skilled Nurse Duties**

Premier stated that although § 9901.1 reads “..Medicaid reimbursable Skilled Nursing services are part time or intermittent...,” some of the beneficiaries have full time or continuous case managers. Premier stated that EPD Waiver case managers should be responsible for coordination of the beneficiary's care and referrals among all home care providers. Premier also stated that there are times that a beneficiary's skilled services do not require a nursing component. It asked who coordinates services when the services include only Physical Therapy, Occupational Therapy, or Speech Pathology and Audiology. Premier further asserted that beneficiaries may not remember or know all of the providers from whom they are receiving services.

Premier also noted that regarding § 9901.5(i), communication notes are sent to physicians when a beneficiary's health condition changes or when there are deviations from the plan of care. Premier requested that DHCF clarify whether “progress notes” as described in these regulations are the same as “communication notes.”

These regulations govern the State Plan home health services benefit. For EPD Waiver beneficiaries receiving State Plan skilled nursing services, the beneficiary's EPD Waiver case manager will work with the staff of the home health agency providing skilled nursing services to ensure that all home care services are properly coordinated.

Physical therapy, occupational therapy, and speech therapy services must also be delivered in accordance with a plan of care developed by an RN employed by the home health agency and signed by the beneficiary's physician, as described in § 9900. Therefore, even if a beneficiary does not receive nursing services, an RN employed by the home health agency is still responsible for creating, reviewing and updating the beneficiary's plan of care and obtaining the physician's signature on the plan of care every sixty (60) days in accordance with 42 CFR § 440.70(a)(2) and § 9900.13 of this chapter.

The term “progress notes” used in these rules is equivalent to the term “progress notes” used by DOH in its regulations governing Skilled Nursing services, found at 22-B DCMR § 3917. DHCF worked closely with DOH staff to ensure that these rules governing Medicaid-funded home health services were consistent with all applicable DOH regulatory requirements.

### **Skilled Nursing Prior Authorization**

Premier raised several procedural questions related to the process for obtaining a prior authorization for the initiation of Skilled Nursing services and for additional hours of Skilled Nursing services above the six (6) hour per day service limitation. DHCF recognizes the procedural issues raised by the commenter regarding the prior authorization process for Skilled Nursing services. DHCF will provide further instruction to providers on this process, but declines to add this level of procedural specificity to the regulations to allow for improvements to the process as the regulations are implemented. As noted above, DHCF determined that creating a uniform prior authorization requirement and process for all home health services governed by these rules would be more efficient and less administratively burdensome for providers and beneficiaries, and therefore providers will receive training on the prior authorization process for all home health services, not just Skilled Nursing.

### **Skilled Nursing Services for IDD Waiver Beneficiaries**

Premier raised procedural questions related to the exhaustion of the State Plan skilled nursing benefit for beneficiaries enrolled in the Home and Community Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (IDD Waiver) and the point of contact for transitioning to the additional skilled nursing services provided through the IDD Waiver. DHCF recognizes the procedural issues raised by the commenter with regard to transitioning eligible beneficiaries from State Plan to IDD Waiver Skilled Nursing services. DHCF will provide further instruction on this process to providers, but declines to add this level of procedural specificity to the regulations to allow for greater flexibility in changing the process as necessary.

### **Skilled Nursing Reimbursement**

Many commenters submitted statements with regard to the proposed reimbursement structure for Skilled Nursing services. LCE stated that it disagreed with the proposed formula based on fifteen (15) minute increments. LCE asserted that the formula is difficult to track and does not ensure that the beneficiary received the required services, and urged DHCF to adopt an outcome-based formula which would be more efficient and transparent, benefiting both beneficiary and provider.

DCHHA stated that in order to attract qualified professional nurses, the nurses must be treated as professionals, not “hourly” wage earners. DCHHA noted that nurses are expected to perform a service with high quality and should focus on the expected requirements of the service provided, and asserted that trying to account for fifteen (15) minute increments of time would place an additional burden on nurses. DCHHA therefore suggested that base flat rates for each visit be instituted for all Skilled Nursing services. However, DCHHA went on to state that the association recognizes that certain skilled nursing services may take longer than nursing services needed for Personal Care Aide patients; these could include services such as I.V. therapy, and other skilled nursing required for patients with other medical complications. In such cases, DCHHA suggested using a base flat rate for the first hour, and then using the rates noted below for time spent in excess of one (1) hour.



DCHHA proposed a flat rate for Skilled Nursing services with some variation of the type of visit as follows: (a) initial assessment and reassessments – flat amount per visit: \$120.00; (b) supervisory visits - flat amount per visit: \$110.00; (c) LPN visits - flat amount per visit: \$90.00; and (d) other Skilled Nursing visits - base rate of \$120.00 plus for any time in excess of one (1) hours, pay the fifteen (15) minute incremental rate provided in § 9901.18.

Health Management, Inc. also suggested the reimbursement structure for Skilled Nursing services be changed from the structure proposed in the initial emergency and proposed rulemaking to the structure proposed by DCHHA.

Premier stated that except for assessment visits which average two (2) to three (3) hours, the average length of nursing visits are about an hour. Premier noted that the existing rate of \$65 per visit (for up to four (4) hours) was created in 1988 and stated that a simple inflation calculator shows that the value of \$65 in 1988 is \$137 in 2017. Premier therefore asserted that the proposed rate of \$15 per fifteen (15) minute increment, which is \$60 per hour, is in effect a reduction in reimbursement. Premier further asserted that the effect of this proposed rate will be a further contraction in the availability of quality nurses and nursing services provided to D.C. residents in the community.

Berhan stated that the agency is currently unable to attract and or maintain the R.N.s trained by the agency due to reimbursement issues, as the agency has been unable to raise visit payment for over fifteen (15) years. Berhan asserted that there is a critical shortage of nurses and that most of the nurses who work in home care appreciate the flexibility the home care environment affords. Berhan stated that institutional memory and specific acquired knowledge are key to providing quality services and that both DHCF and home health agencies want to be able to retain talented R.N.s who have the expertise to provide quality home health services to our residents. Furthermore, Berhan stated, if agencies can keep good nurses ER hospital visits and readmissions can be avoided and experienced home care nurses can be instrumental in implementing a less costly approach of intervention before patients end up in hospitals.

DHCF has held multiple meetings with home health agencies providing Skilled Nursing services to explain and discuss the reimbursement methodology in detail.

Following extensive discussions with the provider community, DHCF has determined that the reimbursement structure for both supervisory nurse visits and reassessments should mirror the structure for initial assessments. Therefore, in these second emergency and proposed rules, DHCF has revised § 9901.19 to indicate that a flat rate will be paid for all initial assessments, reassessments, and supervisory nurse visits.

DCHHA and Premier also submitted comments related to the documentation requirements for reimbursement of Skilled Nursing services, as described in § 9901.20. DCHHA stated that documentation is another aspect of the visit assessment and that R.N.s often carry their work home by ensuring that documentation is completed and up to standard unlike a hospital environment, where once a nurse leaves the facility another nurse will continue. DCHHA stated that documentation includes but is not limited to general assessment, medication updates, physician's orders, coordination of care notes, quarterly review summaries, plans of care, and

direct care Individualized Service Plans. DCHHA asserted that in cases where documentation is completed at a patient's home, it requires at least forty-five (45) and up to sixty (60) minutes to complete. DCHHA therefore suggested that the tracking of such time for Skilled Nursing services be applied only to that amount of time in excess of any time reimbursed at the flat rate proposed by DCHHA.

Premier also asserted that nurses are not trained to document in fifteen (15) minute increments, but rather are trained to document after the completion of an assessment. Premier stated that documenting every eight (8) to fifteen (15) minutes will take away from the assessment time, and that while a nurse may be able to document vital signs and a medication list during the visit, the rest of the documentation is completed after the assessment is done. Premier also stated that documenting in fifteen (15) minute increments will pose a challenge in recruiting and retaining qualified nurse who are not trained to document in such increments and suggested that DHCF consult the Board of Nursing for more questions or clarification on nursing visits and documentation.

As noted above, DHCF has held multiple meetings with home health agencies providing Skilled Nursing services to explain and discuss the reimbursement methodology in detail and has revised § 9901.19 for these second emergency and proposed rules to indicate that a flat rate will be paid for all initial assessments, reassessments, and supervisory nurse visits. Therefore, although all documentation required by DOH for supervisory nurse visits and reassessments must still be completed, billing for these services will be on a per visit rather than an incremental basis. DHCF consulted closely with Board of Nursing staff at DOH to ensure that all documentation requirements contained in these rules are in line with the documentation requirements for services provided by home health agencies contained in Chapter 39 of Title 22-B DCMR.

In sum, DHCF made the following changes in response to comments received for these second emergency and proposed rules: (1) the thirty-six (36) visit per year service limitation for Physical Therapy, Occupational Therapy, and Speech Therapy and Audiology services that was contained in the initial emergency and proposed rules has been eliminated and replaced with a uniform prior authorization requirement for all home health services governed by this chapter in order to reduce the administrative burden on service providers; (2) supervisory duties for skilled nurses have been expanded to include ensuring integration of the Person-Centered Service Plan (PCSP) for EPD Waiver beneficiaries when reviewing a beneficiary's plan of care in order to properly coordinate care for these beneficiaries; (3) the criteria for authorization of Skilled Nursing services in excess of the six (6) hour per day service limitation and for Home Health Aide services in excess of the four (4) hour per day service limitation have been revised to clarify that such services will be authorized if medically necessary, if the beneficiary's needs can be safely met in the home, and if the services are being delivered in a cost-effective manner appropriate to the beneficiary's level of care; (4) the reimbursement structure for Skilled Nursing services has been revised to provide for a flat rate rather than an incremental rate for reassessments and supervisory nurse visits; (5) a timeframe has been added for the initiation of Home Health Aide services to ensure that necessary services are delivered within twenty-four (24) hours of completion of the plan of care, reflecting the timeframe for delivery of personal care aide services; and (6) a definition of "progress note" has been added to clarify that the term is identical to the term used in relevant DOH regulations.

The emergency rulemaking was adopted on September 19, 2017, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days until January 17, 2018, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Chapter 51, MEDICAID REIMBURSEMENT FOR SERVICES PROVIDED BY HOME HEALTH AIDES, is deleted in its entirety.**

**A new Chapter 99, HOME HEALTH SERVICES, is added to read as follows:**

**CHAPTER 99            HOME HEALTH SERVICES**

- 9900 GENERAL PROVISIONS**
- 9901 SKILLED NURSING SERVICES**
- 9902 HOME HEALTH AIDE SERVICES**
- 9903 PHYSICAL THERAPY SERVICES**
- 9904 OCCUPATIONAL THERAPY SERVICES**
- 9905 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES**
- 9906 AUDITS AND RECORD MAINTENANCE**
- 9999 DEFINITIONS**

**9900            GENERAL PROVISIONS**

9900.1            This chapter establishes general standards for conditions of participation for Medicaid providers and delineates specific standards governing Medicaid reimbursement for the following Home Health services:

- (a)            Skilled Nursing services as described in Section 9901;
- (b)            Home Health Aide services as described in Section 9902;
- (b)            Physical Therapy services as described in Section 9903;
- (c)            Occupational Therapy services as described in Section 9904; and
- (d)            Speech Pathology and Audiology services as described in Section 9905.

9900.2            In addition to the services identified in Subsection 9900.1, Medicaid reimbursable Home Health services include Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS).

- 9900.3 The standards of participation and specific requirements governing reimbursement for Home Care agencies enrolled in the Medicaid program providing DMEPOS services are set forth in Sections 996 and 997 of Chapter 9 of Title 29 DCMR.
- 9900.4 In order to qualify for Medicaid reimbursement, Home Health services listed in Section 9900.1 are services that are:
- (a) Ordered by a physician;
  - (b) Provided at the beneficiary's residence or in a setting in which normal life activities take place, unless the exceptions referenced in Subsections 9900.5 and 9900.6 are met; and
  - (c) Delivered in accordance with a plan of care developed by a Registered Nurse (R.N.) under a process that meets the requirements under Subsection 9900.11.
- 9900.5 Except as provided in Subsection 9900.6 and in accordance with 42 CFR § 440.70(c)(1), Home Health services shall not be delivered in a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities (ICF/IID), or any setting in which payment is or could be made under Medicaid for beneficiary services that include room and board.
- 9900.6 Home Health services may be provided in an ICF/IID if the home health service is not provided as part of the facility's services as required under 42 CFR § 483.460.
- 9900.7 A beneficiary shall be eligible for the Medicaid reimbursable Home Health services referenced in Subsection 9900.1 if the following conditions are met:
- (a) DHCF or its designee receives an order for Home Health services from the beneficiary's physician establishing that the services are medically necessary in accordance with the requirements set forth in this chapter; and
  - (b) DHCF or its designee provides prior authorization in accordance with the service delivery requirements set forth in this chapter.
- 9900.8 In order for the services contained in the physician's order described in Subsection 9900.7(a) to be reimbursed by Medicaid, the order must be signed and dated by a physician knowledgeable about the beneficiary's needs and conditions and must state the amount, frequency, scope and duration of the service. The physician's signature on the order constitutes certification by the physician that the services ordered reflect the health status and needs of the beneficiary, and that the beneficiary is eligible for the service.

- 9900.9 For all Medicaid reimbursable Home Health services described in Subsection 9900.1, in order to be reimbursed the ordering physician shall:
- (a) Document that a face-to-face encounter, related to the primary reason the beneficiary requires Home Health services, occurred between the beneficiary and the health practitioner, as defined in Subsection 9900.10, within ninety (90) days before or within thirty (30) days after the start of services; and
  - (b) Indicate the name of the practitioner who conducted the face-to-face encounter and the date of the encounter on the order.
- 9900.10 In order for the services contained in the physician's order described in Subsection 9900.7(a) to be reimbursed by Medicaid, the face-to-face encounter described in Subsection 9900.9 shall be related to the primary reason the beneficiary requires Home Health services and shall be conducted by one of the following health practitioners:
- (a) The ordering physician;
  - (b) A nurse practitioner working in collaboration with the physician;
  - (c) A certified nurse mid-wife as authorized under District law;
  - (d) A physician assistant acting under the supervision of the ordering physician; or
  - (e) For beneficiaries receiving Home Health services immediately after an acute or post-acute stay, the attending acute or post-acute physician.
- 9900.11 In order for the services contained in the physicians' order described in Subsection 9900.7(a) to be reimbursed by Medicaid, the plan of care described in Subsection 9900.4 shall be developed and signed by an R.N. who is employed or under contract to the Home Health services provider. The signature of the R.N. on the plan of care constitutes a certification that the plan of care accurately reflects the assessed needs of the beneficiary and that the services identified in the plan of care are in accordance with the physician's order described in Subsections 9900.7 and 9900.8.
- 9900.12 The beneficiary's physician shall approve the initial plan of care by signing it within thirty (30) calendar days of the development of the plan of care, and noting his or her license number and National Provider Identification number on the plan of care.

- 9900.13 The plan of care for services described in Subsection 9900.1 shall be reviewed, updated and signed by the physician every sixty (60) calendar days.
- 9900.14 All home health services described in the plan of care shall require prior authorization and approval by DHCF in order to be reimbursed by Medicaid..
- 9900.15 Limitations on the delivery of Skilled Nursing services are described under Section 9901.
- 9900.16 Limitations on the delivery of Home Health Aide services are described under Section 9902.

**9901 SKILLED NURSING SERVICES**

- 9901.1 Medicaid reimbursable Skilled Nursing services are part-time or intermittent skilled nursing care services that are needed by a beneficiary due to an illness or injury, and are furnished by nurses in accordance with the beneficiary's plan of care described in Subsection 9900.4.
- 9901.2 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Skilled Nursing services shall meet the following requirements:
- (a) Be enrolled as a Medicare Home Health Agency qualified to offer skilled nursing services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 CFR Part 484;
  - (b) Have sufficient funds or "initial reserve operating funds" available for business expenses determined in accordance with federal special capitalization requirements for home care agencies participating in Medicare as set forth under 42 CFR § 489.28;
  - (c) Meet the District of Columbia Department of Health licensure requirements in accordance with Chapter 39 (Home Care Agencies) of Title 22-B DCMR;
  - (d) Be enrolled as a Medicaid provider of Home Health services and meet all requirements as set forth under Chapter 94 (Medicaid Provider and Supplier, Screening, Enrollment, and Termination) of Title 29 DCMR; and
  - (e) Have a surety bond, in accordance with federal requirements for home care agencies participating in Medicaid as set forth under 42 CFR § 441.16 and Subsection 9901.3.
- 9901.3 Except for government-operated Home Care Agencies, each Home Care Agency that is a Medicaid participating Home Care Agency or that seeks to become a Medicaid participating Home Care Agency shall:

- (a) Obtain a fifty thousand dollar (\$50,000) surety bond that meets the requirements as set forth under 42 CFR § 441.16; and
- (b) Furnish a copy of the surety bond to DHCF.

9901.4 Medicaid reimbursable Skilled Nursing services shall be provided by a R.N. or licensed practical nurse (L.P.N.) licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules.

9901.5 Medicaid-reimbursable Skilled Nursing services shall consist of the following duties:

- (a) Conducting initial assessments either prior to service provision or at the onset of care and reassessments every sixty (60) calendar days thereafter to develop and update a plan of care;
- (b) Coordinating the beneficiary's care and referrals among all Home Care agency providers;
- (c) Implementing preventive and rehabilitative nursing procedures;
- (d) Administering medications and treatments as prescribed by a licensed physician, pursuant to the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as outlined under the plan of care;
- (e) Recording progress notes at each visit and summary notes at least once every sixty (60) calendar days;
- (f) Making necessary updates to the plan of care, and reporting any changes in the beneficiary's condition to his or her physician;
- (g) Instructing the beneficiary on treatment regimens identified under the plan of care;
- (h) Updating the physician on changes in the beneficiary's condition and obtaining orders to implement those changes; and
- (i) For R.N.s who supervise nursing services delivered by a skilled nurse (R.N. or L.P.N.) and services delivered by Home Health Aides and Personal Care Aides, duties shall include, at minimum, the following:

- (1) Supervising the beneficiary's skilled nurse and aide on-site, at least once every sixty (60) calendar days;
- (2) Ensuring that new or revised physician orders have been obtained initially from the treating physician and then at least every sixty (60) calendar days thereafter, to promote continuity of care;
- (3) Reviewing the beneficiary's plan of care, including ensuring integration of the Person-Centered Service Plan (PCSP) for EPD Waiver beneficiaries into the plan of care;
- (4) Monitoring the beneficiary's general health outcomes, including taking vital signs, conducting a comprehensive physical examination, and determining mental status;
- (5) Determining if the beneficiary has any unmet medical needs;
- (6) Ensuring that all home health services are provided safely and in accordance with the plan of care;
- (7) Ensuring that the beneficiary has received education on any needed services;
- (8) Ensuring the safe discharge or transfer of the beneficiary;
- (9) Ensuring that the physician receives progress notes when the beneficiary's health condition changes, or when there are deviations from the plan of care;
- (10) Ensuring that a summary report of the visit is sent to the physician every sixty (60) calendar days; and
- (11) Reporting any instances of abuse, neglect, exploitation or fraud to DHCF and other appropriate District government agencies, including the Department of Health, to promote a safe and therapeutic environment in accordance with 17 DCMR § 5414.

9901.6 For Medicaid reimbursable services, the initial assessment to develop the plan of care and reassessments to update the plan of care shall only be conducted by an R.N. The R.N. conducting an initial assessment or periodic reassessment in accordance with this Chapter shall certify in writing that the statements made in the assessment are true and accurate.

9901.7 Consistent with the Department of Health regulations at 22-B DCMR § 3917, Medicaid reimbursable Skilled Nursing services provided by an L.P.N. shall be supervised by an R.N.



- 9901.8 When an L.P.N. provides Skilled Nursing services, the duties of the L.P.N. shall not include supervisory duties.
- 9901.9 When an R.N. is supervising a skilled nurse (L.P.N. or R.N.) providing Medicaid reimbursable services, the R.N. shall monitor and supervise the services provided by the L.P.N. or R.N., including conducting a site visit at least once every sixty (60) calendar days, or more frequently, if specified in the beneficiary's plan of care.
- 9901.10 The skilled nurse shall record progress notes during each visit which shall comply with the standards of nursing care established under 17 DCMR §§ 5414 and 5514, and which shall include the following information:
- (a) Notations regarding any unusual health or behavioral events or changes in status;
  - (b) Notations regarding any matter requiring follow-up on the part of the service provider or DHCF; and
  - (c) A concise written statement of the beneficiary's progress or lack of progress, medical conditions, functional losses, and treatment goals as outlined in the plan of care that demonstrates that the beneficiary's services continue to be reasonable and necessary.
- 9901.11 The skilled nurse shall prepare summary notes every sixty calendar (60) days summarizing the progress notes recorded at each visit and bringing attention to any matter requiring follow-up on the part of the Home Care Agency or DHCF.
- 9901.12 Skilled Nursing services shall be reimbursed by Medicaid for up to six (6) hours a day with prior authorization by DHCF, in accordance with the requirements set forth under Subsection 9901.13. Beneficiaries may also qualify for additional reimbursable hours if they meet the requirements referenced under Subsection 9901.16. The need for continuing Skilled Nursing services shall be reassessed and certified by the physician every sixty (60) calendar days.
- 9901.13 For Medicaid reimbursable services, a beneficiary or his/her physician shall obtain prior authorization for the initiation of Skilled Nursing services by submitting a physician's order as described in Section 9900 to DHCF or its agent to support the beneficiary's need for Skilled Nursing services which aligns with the beneficiary's assessed needs.
- 9901.14 A Home Care agency shall obtain prior authorization for continuing Medicaid reimbursable Skilled Nursing services every sixty (60) calendar days by submitting an updated physician's order and any supporting documentation to DHCF or its agent to support the beneficiary's need for ongoing Skilled Nursing

services which align with the beneficiary's assessed needs, as outlined in the updated plan of care.

- 9901.15 Medicaid reimbursable Skilled Nursing services may be provided without a prior authorization for up to six (6) hours a day for a period not to exceed five (5) calendar days only when the beneficiary's need for Skilled Nursing services is immediate, such as an emergency situation or to ensure the safe and orderly discharge of the beneficiary from a hospital or nursing home to the beneficiary's home.
- 9901.16 DHCF may authorize additional hours of Medicaid reimbursable Skilled Nursing services above the six (6) hour per day limit for a beneficiary if DHCF determines that:
- (a) Additional hours are medically necessary as reflected on the physician's order described in Subsections 9900.7 through 9900.9;
  - (b) The beneficiary's needs can be safely met in the home; and
  - (c) The beneficiary's Medicaid-funded services are being delivered in a cost-effective manner appropriate to the beneficiary's level of care.
- 9901.17 Beneficiaries enrolled in the § 1915(c) Individuals with Intellectual and Developmental Disabilities (IDD) Home and Community-Based Services Waiver in need of additional hours of Skilled Nursing services beyond those provided under the State Plan may be eligible to receive Skilled Nursing services under the IDD Waiver to the extent the individual has first exhausted the State Plan benefit; qualifies for Skilled Nursing services or extended Skilled Nursing services under 29 DCMR §§ 1931 *et seq.*; and such services are consistent with the individual's plan of care.
- 9901.18 The Medicaid reimbursement rate for Skilled Nursing services shall be fifteen dollars (\$15.00) for each fifteen (15) minute unit of service for services provided by a R.N., and twelve dollars and fifty cents (\$12.50) for each fifteen (15) minute unit of service provided by a L.P.N.
- 9901.19 The Medicaid reimbursement rate for an initial assessment, reassessment or supervisory visit by a R.N. shall be a flat rate of one hundred and twenty dollars (\$120).
- 9901.20 In order to bill for a fifteen (15) minute unit of Skilled Nursing services, a provider shall ensure that documentation of the visit shows Skilled Nursing services were provided for at least eight (8) minutes during the fifteen (15) minute unit.

9901.21 Medicaid reimbursable Skilled Nursing services shall comply with the following service limitations:

- (a) Assessments, reassessments or supervisory visits of a skilled nurse or aide shall not be included in the calculation of the daily Skilled Nursing cap;
- (b) When a skilled nurse performs the duties described under Subsections 9901.5(b)-(h) during an initial assessment, reassessment, or supervisory visit, these services shall be included as part of the rate paid for an initial assessment, reassessment, or supervisory visit, and shall not be billed separately; and
- (c) When a skilled nurse provides assistance with activities of daily living during an assessment, supervisory, or Skilled Nursing visit, the Home Care agency shall ensure that activities performed during the assessment, supervisory, or Skilled Nursing visit are only billed as Skilled Nursing services and may not also be billed as personal care aide services.

9901.22 Beneficiaries who receive Medicaid-reimbursed Skilled Nursing services may not concurrently receive Medicaid-reimbursed Private Duty Nursing services under the State Plan.

## **9902 HOME HEALTH AIDE SERVICES**

9902.1 Medicaid reimbursable Home Health Aide services are services that are required by a beneficiary due to an illness or injury, and include assistance with activities of daily living, assistance with self-administered medications, or other clinical tasks to assist with the provision of nursing or skilled services such as cleaning around a feeding tube and assistance with oxygen therapy, on a part-time or intermittent basis.

9902.2 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Home Health Aide services shall meet all requirements of Subsection 9901.2.

9902.3 Medicaid reimbursable Home Health Aide services shall be provided by a home health aide certified in accordance with Chapter 93 (Home Health Aides) of Title 17 DCMR who is supervised in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules.

9902.4 Medicaid reimbursable Home Health Aide services shall consist of the following duties:

- (a) Performing personal care including assistance with activities of daily living such as bathing, personal hygiene, toileting, transferring from the

wheelchair, and instrumental activities such as meal preparation, laundry, grocery shopping, and telephone use;

- (b) Changing urinary drainage bags;
- (c) Assisting the beneficiary with transfer, ambulation, and exercise as prescribed;
- (d) Assisting the beneficiary with self-administration of medication;
- (e) Measuring and recording temperature, pulse, respiration, and blood pressure;
- (f) Measuring and recording height and weight;
- (g) Observing, recording, and reporting the beneficiary's physical condition, behavior, or appearance;
- (h) Preparing meals in accordance with dietary guidelines;
- (i) Assisting with skills necessary for food consumption;
- (j) Implementing universal precautions to ensure infection control;
- (k) Performing tasks related to keeping the beneficiary's living area in a condition that promotes the beneficiary's health and comfort;
- (l) Changing simple dressings that do not require the skills of a licensed nurse;
- (m) Assisting the beneficiary with activities that are directly supportive of skilled therapy services;
- (n) Assisting with routine care of prosthetic and orthotic devices
- (o) Emptying and changing colostomy bags and performing care of the stoma;
- (p) Cleaning around a gastrostomy tube site;
- (q) Administering an enema; and
- (r) Assisting with oxygen therapy.

9902.5

Home Health Aide services shall be reimbursed by Medicaid for up to four (4) hours per day with prior authorization by DHCF, in accordance with the requirements set forth under Subsection 9902.6. The need for continuing Home

Health Aide services shall be reassessed and certified by the physician every sixty (60) days.

- 9902.6 A beneficiary and his/her physician shall obtain prior authorization for the initiation of Medicaid reimbursable Home Health Aide services by submitting a physician's order as described in Section 9900 to DHCF or its agent to support the beneficiary's need for Home Health Aide services which aligns with the beneficiary's assessed needs.
- 9902.7 The Home Care agency shall initiate Home Health Aide services no later than twenty-four (24) hours after completing the plan of care, as described in Subsection 9900.11, unless the beneficiary's health or safety warrants the need for more immediate service initiation or the beneficiary or beneficiary's representatives agree to begin the services at a later date.
- 9902.7 The Home Care agency shall obtain prior authorization for continuing Medicaid reimbursable Home Health Aide services every sixty (60) calendar days by submitting an updated physician's order and any supporting documentation to DHCF or its agent to support the beneficiary's need for ongoing Home Health Aide services which aligns with the beneficiary's assessed needs, as outlined in the updated plan of care.
- 9902.8 DHCF may authorize additional hours of Medicaid reimbursable Home Health Aide services above the four (4) hour per day limit for a beneficiary if DHCF determines that:
- (a) Additional hours are medically necessary as reflected on the physician's order described in Subsections 9900.7 through 9900.9;
  - (b) The beneficiary's needs can be safely met in the home; and
  - (c) The beneficiary's Medicaid-funded services are being delivered in a cost-effective manner appropriate to the beneficiary's level of care.
- 9902.9 For dates of service prior to January 1, 2017, providers shall be reimbursed five dollars and two cents (\$5.02) per unit of service for allowable Home Health Aide services as authorized in the approved plan of care, of which no less than three dollars and forty six cents (\$3.46) per fifteen (15) minutes for services rendered by a home health aide shall be paid to the home health aide to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2016 Repl.)).
- 9902.10 For dates of service beginning January 1, 2017, providers shall be reimbursed five dollars and five cents (\$5.05) per unit of service for allowable Home Health Aide services as authorized in the approved plan of care, of which no less than three dollars and forty-nine cents (\$3.49) per fifteen (15) minutes for services rendered

by a home health aide shall be paid to the home health aide to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2016 Repl.)).

9902.11 Subsequent changes to the reimbursement rate(s) shall be posted on the Medicaid fee schedule at [www.dc-medicaid.com](http://www.dc-medicaid.com) and DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s).

9902.12 If a beneficiary is receiving Adult Day Health Program (ADHP) services under Chapter 97 of Title 29 DCMR on the same day that Home Health Aide services are delivered, the combination of Medicaid reimbursable ADHP and Home Health Aide services shall not exceed a total of twelve (12) hours per day.

9902.13 A beneficiary shall not receive Personal Care Aide (PCA) services under Chapter 42 or Chapter 50 of Title 29 DCMR and Home Health Aide services concurrently. Medicaid claims for PCA services submitted by a provider for any hour in which the beneficiary was receiving Medicaid reimbursable Home Health Aide services shall be denied.

### **9903 PHYSICAL THERAPY SERVICES**

9903.1 Medicaid reimbursable Physical Therapy services are skilled services designed to treat a beneficiary's identified physical dysfunction or reduce the degree of pain associated with movement, injury or long term disability. Physical Therapy services should also maximize independence and prevent further disability, maintain health, and promote mobility.

9903.2 Medicaid reimbursable Physical Therapy services shall be provided in accordance with the beneficiary's plan of care described in Subsection 9900.4.

9903.3 In accordance with the District's Medicaid State Plan, Physical Therapy is provided as part of a plan of care in a hospital, skilled care facility, intermediate care facility or through a Home Care agency.

9903.4 In order to be eligible for Medicaid reimbursement for Physical Therapy services, a Home Care agency shall meet the requirements under Subsection 9901.2.

9903.5 Medicaid-reimbursable Physical Therapy services shall be provided by a physical therapist with at least two (2) years of experience and licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules.

9903.6 Medicaid-reimbursable Physical Therapy services shall consist of the following duties:

- (a) Conducting an initial evaluation and assessment that summarizes the physician's order and documents the beneficiary's strength, range of motion, balance, coordination, muscle performance, respiration, and motor functions;
- (b) Developing and describing therapy plans which explain therapeutic strategies, rationale, treatment approaches and activities to support treatment goals;
- (c) Maintaining ongoing involvement and consulting with other service providers and caregivers;
- (d) Consulting and instructing the beneficiary, family, or other caregivers on the therapy plan;
- (e) Recording daily progress notes and summary notes at least quarterly, or more frequently as needed;
- (f) Assessing the beneficiary's need for the use of adaptive equipment;
- (g) Routinely assessing (at least annually and more frequently as needed) the appropriateness, quality, and functioning of adaptive equipment to ensure it addresses the beneficiary's needs;
- (h) Accurately completing documentation required to obtain or repair adaptive equipment in accordance with established insurance, Medicare and Medicaid guidelines; and
- (i) Conducting periodic examinations and modifying treatments for the beneficiary receiving services and ensuring that Physical Therapy recommendations are incorporated into the plan of care.

9903.7 In accordance with Subsection 9900.14, Physical Therapy services shall only be reimbursed by Medicaid with prior authorization and approval by DHCF.

9903.8 Physical Therapy services shall be reimbursed pursuant to the District of Columbia's Medicaid fee schedule, available at [www.dc-medicaid.com](http://www.dc-medicaid.com).

#### **9904 OCCUPATIONAL THERAPY SERVICES**

9904.1 Medicaid reimbursable Occupational Therapy services are skilled services designed to maximize independence, gain skills, prevent further disability, and develop, restore, or maintain a beneficiary's daily living and work skills.

- 9904.2 Medicaid reimbursable Occupational Therapy services shall be provided in accordance with the beneficiary's plan of care as described in Subsection 9900.4.
- 9904.3 In accordance with the District's Medicaid State Plan, Occupational Therapy is provided as part of a plan of care in a hospital, skilled care facility, intermediate care facility or through a Home Care agency.
- 9904.4 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Occupational Therapy services shall meet the requirements under Subsection 9901.2.
- 9904.5 Medicaid reimbursable Occupational Therapy services shall be provided by an occupational therapist with at least two (2) years of experience and licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules.
- 9904.6 Medicaid-reimbursable Occupational Therapy services shall consist of the following duties:
- (a) Conducting an initial evaluation and assessment that:
    - (1) Summarizes the physician's order;
    - (2) Documents the beneficiary's strength, range of motion, balance, coordination, muscle performance, respiration, and motor functions; and
    - (3) Reflects the beneficiary's employment and living goals;
  - (b) Developing and describing therapy plans which explain therapeutic strategies, rationale, treatment approaches and activities to support treatment goals;
  - (c) Consulting and instructing the beneficiary, family, or other caregivers on the therapy plan;
  - (d) Recording daily progress notes and summary notes at least quarterly, or more frequently as needed;
  - (e) Assessing the beneficiary's need for the use of adaptive equipment;
  - (f) Routinely assessing (at least annually and more frequently as needed) the appropriateness, quality, and functioning of adaptive equipment to ensure it addresses the beneficiary's needs;



- (g) Completing documentation required to obtain or repair adaptive equipment in accordance with established insurance, Medicare and Medicaid guidelines;
- (h) Conducting and documenting quarterly assessments to verify the condition of the adaptive equipment; and
- (i) Conducting periodic examinations to modify treatments for the beneficiary, when necessary, and ensure that Occupational Therapy recommendations are incorporated into the plan of care.

9904.7 In accordance with Subsection 9900.14, Occupational Therapy services shall only be reimbursed by Medicaid with a prior authorization and approval by DHCF.

9904.8 Occupational Therapy services shall be reimbursed pursuant to the District of Columbia's Medicaid fee schedule, available at [www.dc-medicaid.com](http://www.dc-medicaid.com).

## **9905 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES**

9905.1 Medicaid reimbursable Speech Pathology and Audiology services are skilled therapeutic interventions to address communicative and speech disorders to maximize a beneficiary's expressive and receptive communication skills and are intended to treat the beneficiary's medical or non-medical communicative disorder.

9905.2 Medicaid reimbursable Speech Pathology and Audiology services shall be provided in accordance with the beneficiary's plan of care as described in Subsection 9900.4.

9905.3 In accordance with the District of Columbia Medicaid State Plan, Speech Pathology and Audiology services shall be limited to beneficiaries eligible through the Early Periodic Screening Diagnostic Treatment (EPSDT) benefit.

9905.4 In accordance with the District of Columbia Medicaid State Plan, Speech Pathology and Audiology services shall only be provided by a facility licensed to provide medical rehabilitation services or a Home Care agency.

9905.5 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Speech Pathology and Audiology services shall meet the requirements under Subsection 9901.2.

9905.6 Medicaid reimbursable Speech Pathology and Audiology services shall be provided by a speech language pathologist or audiologist with at least two (2) years of experience that is licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986

(D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules.

9905.7 Medicaid-reimbursable Speech Pathology and Audiology services shall consist of the following duties:

- (a) Conducting a comprehensive assessment, which shall include the following:
  - (1) A background review and current functional review of communication capabilities in different environments, including employment, residence, and other settings in which normal life activities take place;
  - (2) An evaluation of the beneficiary's potential for using augmentative or alternative speech devices, methods, or strategies;
  - (3) An evaluation of the beneficiary's potential for using sign language or other expressive communication methods; and
  - (4) A needs assessment for the use of adaptive eating equipment.
- (b) Developing and implementing the treatment plan that describes treatment strategies including, direct therapy, training caregivers, monitoring requirements, monitoring instructions, and anticipated outcomes;
- (c) Assisting beneficiaries with voice disorders to develop proper control of vocal and respiratory systems for correct voice production, if applicable;
- (d) Conducting aural rehabilitation by teaching sign language and/or lip reading to people who have hearing loss, if applicable;
- (e) Recording daily progress notes and summary notes at least quarterly, or more frequently as needed;
- (f) Conducting periodic examinations, modifying treatments for the beneficiary receiving services and ensuring that the recommendations are incorporated into the Plan of Care; when necessary; and
- (g) Conducting discharge planning.

9905.8 In accordance with Subsection 9900.14, Speech Pathology and Audiology services shall only be reimbursed by Medicaid with prior authorization and approval by DHCF.

9905.9 Speech Pathology and Audiology services shall be reimbursed pursuant to the District of Columbia's Medicaid fee schedule, available at [www.dc-medicaid.com](http://www.dc-medicaid.com).

## **9906 AUDITS AND RECORD MAINTENANCE**

9906.1 All Medicaid reimbursable Skilled Nursing, Home Health Aide, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology services shall adhere to the audit and record maintenance requirements set forth in this section.

9906.2 Record maintenance requirements related to DMEPOS shall be governed under Subsection 996 of Chapter 9 (Medicaid Program) of Title 29 DCMR.

9906.3 DHCF shall perform audits to ensure that Medicaid payments are consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing the Medicaid program.

9906.4 DHCF shall routinely conduct the audit process to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid. These audits shall be conducted on-site or through an off-site desk review.

9906.5 Each Home Care Agency shall allow access to relevant records and program documentation upon request and during an on-site audit or review by DHCF, other District of Columbia government officials and representatives of the United States Department of Health and Human Services (HHS).

9906.6 Each Home Care agency shall maintain complete and accurate records reflecting the specific Home Health services provided to each beneficiary for each unit of service billed. Such records shall be maintained for a period of ten (10) years or when all audits have been completed, whichever is longer.

## **9999 DEFINITIONS**

9999.1 When used in this chapter, the following terms shall have the following meanings:

**Adaptive Equipment** - Medical devices used to assist the beneficiary in performing activities of daily living.

**Medically Necessary** - A physician's determination that a beneficiary meets the requirements for services as set forth in this chapter.

**Order** - A formal, written instruction signed by the physician regarding a beneficiary's medical care, treatment or management which specifically requests the provision of a specific service.

**Plan of Care** - A written document developed by the R.N. hired by the Home Health services provider that delineates the various treatments of the beneficiary.

**Progress Note** - A dated, written notation by a member of the health care team that summarizes facts about care and the patient's response during a given period of time, as set forth in 22-B DCMR § 3999.

**Skilled Nurse** - An R.N. or L.P.N. licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules or appropriately licensed in the jurisdiction where services are rendered.

**Surety Bond** - One or more bonds issued by one or more surety companies under 31 USC §§ 9304 to 9308 and 31 CFR Parts 223, 224, and 225.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, N.W., Suite 900 South, Washington D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

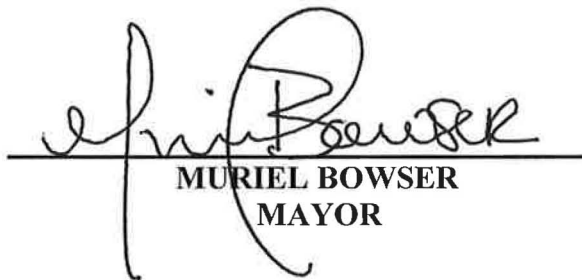
Mayor’s Order 2017-220  
September 20, 2017

**SUBJECT:** Reappointments — Committee on Metabolic Disorders


**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with the District of Columbia Newborn Screening Requirement Act of 1979, effective April 29, 1980, D.C. Law 3-65, D.C. Official Code § 7-831 *et seq.* (2013 Repl.), it is hereby **ORDERED** that:

1. The following persons are reappointed as members of the Committee on Metabolic Disorders for terms to end September 30, 2020:
  - a. **NICHOLAS AH MEW**, as a licensed physician knowledgeable in the diagnosis and treatment of metabolic disorders.
  - b. **MARK ENGMAN**, as a consumer member.
  - c. **INEZ REEVES**, as a licensed physician knowledgeable in the diagnosis and treatment of metabolic disorders.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**


Mayor's Order 2017-221  
September 20, 2017

**SUBJECT:** Appointments– Board of Barber and Cosmetology

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), in accordance with section 1002 of the Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999, D.C. Law 12-261, D.C. Official Code § 47-2853.06(c) (2015 Repl.), 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 (2016 Repl.), it is hereby **ORDERED** that:

1. **ISAAC COLON**, pursuant to the Board of Barber and Cosmetology Isaac Colon Confirmation Resolution of 2017, effective May 1, 2017, PR22-0136, is appointed as a body artist member of the Board of Barber and Cosmetology, replacing Paul Roe, to serve for a term to end December 13, 2017, and for a new term to end December 13, 2020.
2. **ANTONIA BROWNING SMILEY**, pursuant to the Board of Barber and Cosmetology Antonia Browning Smiley Confirmation Resolution of 2017, effective March 25, 2017, PR22-0088, is appointed as a consumer member of the Board of Barber and Cosmetology, replacing Tammy Musselwhite, for a term to end December 13, 2019.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

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**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2017-222  
September 20, 2017

**SUBJECT:** Reappointments — Board of Dentistry

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 201 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99; D.C. Official Code § 3-1202.01 (2016 Repl. and 2017 Supp.), 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 (2016 Repl.), it is hereby **ORDERED** that:

1. **YOLANDA JOSEY-BAKER**, pursuant to the Board of Dentistry Yolanda Josey-Baker Confirmation Resolution of 2017, effective April 8, 2017, PR22-0114, is reappointed as a dental hygienist licensed in the District member of the Board of Dentistry, for a term to end November 30, 2019.
2. **IRIS MORTON**, pursuant to the Board of Dentistry Iris Morton Confirmation Resolution of 2017, effective March 25, 2017, PR22-0089, is reappointed as a dentist licensed in the District member of the Board of Dentistry, for a term to end November 30, 2019.
3. **JOHN BAILEY**, pursuant to the Board of Dentistry John Bailey Confirmation Resolution of 2017 effective February 25, 2017, PR22-0047, is reappointed as a licensed dentist member of the Board of Dentistry, for a term to end November 30, 2019.

4. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.



MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

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**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2017-223  
September 20, 2017

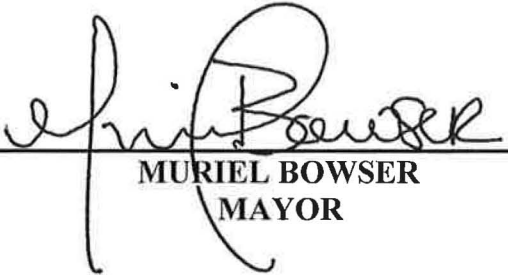
**SUBJECT:** Appointments — Board of Dietetics and Nutrition

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 202 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99; D.C. Official Code § 3-1202.02 (2016 Repl.), 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 (2016 Repl.), it is hereby **ORDERED** that:

1. **ANNINA BURNS**, pursuant to the Board of Dietetics and Nutrition Annina Burns Confirmation Resolution of 2017, effective June 17, 2017, PR22-0251 is appointed as a licensed nutritionist who is not a dietician member of the Board of Dietetics and Nutrition, replacing Janet Unonu, for a term ending March 12, 2018.
2. **KIMBERLY THOMPSON**, pursuant to the Board of Dietetics and Nutrition Kimberly Thompson Confirmation Resolution of 2017, effective June 17, 2017, PR22-0252 is appointed as a licensed dietician member of the Board of Dietetics and Nutrition, replacing Annina Burns, to serve the remainder of an unexpired term ending March 12, 2019.
3. **CHESLEY RICHARDSON**, pursuant to the Board of Dietetics and Nutrition Chesley Richardson Confirmation Resolution of 2017, effective May 29, 2017, PR22-0198 is appointed as a consumer member of the Board of Dietetics and Nutrition, replacing Jennifer McCrindle, for a term to end March 12, 2020.

4. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.



MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

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**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2017-224  
September 20, 2017

**SUBJECT:** Reappointments and Appointments— Board of Funeral Directors

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 1002 of the Second Omnibus Regulatory Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-261; D.C. Official Code §§ 47-2853.06(f) and 47-2853.07 (2015 Repl.), 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 (2016 Repl.), it is hereby **ORDERED** that:


1. **ERNEST BOYKIN**, pursuant to the Board of Funeral Directors Ernest Boykin Confirmation Resolution of 2017, effective July 1, 2017, PR 22-0304, is appointed as a consumer member of the Board of Funeral Directors, replacing Essita Duncan, to serve the remainder of an unexpired term ending March 1, 2018.
2. **RANDOLPH HORTON**, pursuant to the Board of Funeral Directors Randolph Horton Confirmation Resolution of 2017, effective May 29, 2017, PR22-0197, is reappointed as a funeral director licensed in the District member of the Board of Funeral Directors, for a term to end March 1, 2020.
3. **JOHN MCGUIRE**, pursuant to the Board of Funeral Directors John McGuire Confirmation Resolution of 2017, effective May 29, 2017, PR22-0195, is reappointed as a funeral director licensed in the District member of the Board of Funeral Directors, for a term to end March 1, 2020.
4. **DUANE HILLS**, pursuant to the Board of Funeral Directors Duane Hills Confirmation Resolution of 2017, effective May 29, 2017, PR 22-0196, is appointed as a funeral director licensed in the District member of the Board of Funeral Directors, replacing Lynn Armstrong Patterson, for a term to end March 1, 2020.

5. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.



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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM


Mayor's Order 2017-225  
September 20, 2017

**SUBJECT:** Appointments — Board of Long-Term Care Administration

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), section 205 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99; D.C. Official Code § 3-1202.05 (2016 Repl.), 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 (2016 Repl.), it is hereby **ORDERED** that:

1. **TOYA CARMICHAEL**, pursuant to the Board of Long-Term Care Administration Toya Carmichael Confirmation Resolution of 2017 effective June 17, 2017, PR22-0253 is appointed as a consumer member of the Board of Long-Term Care Administration, filling a vacant seat, for a term to end July 21, 2020.
2. **KEYSHA DALE**, pursuant to the Board of Long-Term Care Administration Keysha Dale Confirmation Resolution Act of 2017 effective February 25, 2017, PR22-0055, is reappointed as a licensed nursing home administrator member of the Board of Long-Term Care Administration for a term to end July 21, 2018.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the date of confirmation.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**OFFICE OF ADMINISTRATIVE HEARINGS****DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES****NOTICE OF PUBLIC MEETING**

In accordance with D.C. Code § 2-576(1), the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (Commission) hereby gives notice that it will meet on September 29, 2017, at 11:00 a.m. at the D.C. Rental Housing Commission, 441 4<sup>th</sup> Street, NW Suite 1140B North, Washington, DC in order to consider the reappointments of seven Administrative Law Judges. The members will vote to close a portion of the meeting pursuant to D.C. Code § 2-575(b)(10), which permits closed meetings in order to “discuss the appointment, employment, assignment, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.” The agenda below will be posted on the OAH website at [www.oah.dc.gov](http://www.oah.dc.gov) and the Office of Open Government/BEGA website at [www.open-dc.gov](http://www.open-dc.gov).

For further information, please contact Louis Neal at [Louis.Neal@dc.gov](mailto:Louis.Neal@dc.gov) or 202-724-3672.

**AGENDA**

- I. Call to Order (Board Chair)**
- II. Ascertainment of Quorum**
- III. Adoption of Agenda**
- IV. Appearance/Comments by Chairman Phil Mendelson at his request**
- V. Executive Session (non-public). Vote to enter closed session to discuss personnel matters pursuant to D.C. Official Code § 2-575(b)(10).**
  - a) Re-Vote on Administrative Law Judges Due to Technical Issue on 6/29/2017 Meeting**
    - a. Nicholas Cobbs**
    - b. Sharon Goodie**
    - c. Scott Harvey**
  - b) Vote on Reappointments of Remaining Eligible Administrative Law Judges**
    - a. Arabella Teal**
    - b. Audrey Jenkins**
    - c. Wanda Tucker**
    - d. Jesse Goode**

**VI. Resumption of Public Meeting**

**VII. Discussion of Next Meeting**

**VIII. Adjournment (Board Chair)**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, OCTOBER 4, 2017  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S  
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson  
Members: Nick Alberti, Mike Silverstein,  
James Short, Jake Perry, Donald Isaac, Sr.

**Protest Hearing (Status)** **9:30 AM**  
**Case # 17-PRO-00048;** The Wine Outlet III, LLC, t/a The Wine Outlet, 3210  
Grace Street NW, License #105815, Retailer B  
**Application for a New License**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 17-PRO-00049;** Church DC, LLC, t/a Church, 3222 M Street NW  
License #106963, Retailer CR  
**Application for a New License**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 17-CC-00047;** Foggy Bottom Grocery, LLC, t/a FoBoGro, 2140 F Street  
NW, License #82431, Retailer B  
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal  
Drinking Age**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 17-CMP-00286;** Mai Thai of Georgetown, LLC, t/a Mai Thai of  
Georgetown, 3251 Prospect Street NW, License #85973, Retailer CR  
**Failed to File Quarterly Statement**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 17-CMP-00397;** Kiss, LLC, t/a Kiss Tavern, 637 T Street NW, License  
#104710, Retailer CT  
**Failed to Comply with Board Order, Violation of Settlement Agreement**



Board’s Calendar

October 4, 2017

**Show Cause Hearing (Status)**

**9:30 AM**

**Case # 17-CMP-00328;** Thai Chef, Inc., t/a Thai Chef, 1712 Connecticut Ave  
NW, License #22928, Retailer CR  
**Failed to File Quarterly Statement**

**Fact Finding Hearing\***

**10:00 AM**

Norman Goodson  
**Application for a Manager’s License**

**Fact Finding Hearing\***

**11:00 AM**

507 K, LLC, t/a SkillZone; 709 8th Street SE, License #106766, Retailer DT  
**ANC 6B Request for Hearing**

**BOARD RECESS AT 12:00 PM  
ADMINISTRATIVE AGENDA  
1:00 PM**

**Protest Hearing\***

**1:30 PM**

**Case # 17-PRO-00042;** The V.I.P. Room, LLC, t/a The V.I.P. Room, 6201 3rd  
Street NW, License #105823, Retailer CT  
**Application for a New License**

**Protest Hearing\***

**4:30 PM**

**Case # 17-PRO-00035;** DGBA, LLC, t/a Dacha Beer Garden, 1740 14th Street  
NW, License #105719, Retailer CT  
**Application for a New 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  
CANCELLATION AGENDA**

**WEDNESDAY, OCTOBER 4, 2017  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-101301 – **Alfie’s** – Retail – C – Restaurant - 3301 Georgia Avenue NW  
[Licensee did not pay Safekeeping fee within 30 days.]

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ABRA-060689 – **Capitol Hill Tandoor and Grill** – Retail – C – Restaurant - 419 8th Street SE  
[Licensee did not pay Safekeeping fee within 30 days.]

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**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, OCTOBER 4, 2017  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On Wednesday, October 4, 2017 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# 17-251-00150, Kabin, 1337 Connecticut Avenue N.W., Retailer CT, License # ABRA-091276

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2. Case# 17-CMP-00522, Churreria Madrid Restaurant, 2505 Champlain Street N.W., Retailer CR, License # ABRA-060806

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3. Case# 17-CMP-00521, Tonic, 2036 G Street N.W., Retailer CR, License # ABRA-075297

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4. Case# 17-AUD-00054, Old Europe, 2434 Wisconsin Avenue N.W., Retailer CR, License # ABRA-000585

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5. Case# 17-251-00154, Aqua Restaurant, 1818 New York Avenue N.E., Retailer CN, License # ABRA-060477

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6. Case# 17-251-00153, Phoenix Restaurant Lounge, 2434 18<sup>th</sup> Street N.W., Retailer CR, License # ABRA-107011

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7. Case# 17-CMP-00544, Roti Mediterranean Grill, 1311 F Street N.W., Retailer DR, License # ABRA-102598

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8. Case# 17-CMP-00530, Hitching Post Restaurant, 200 Upshur Street N.W., Retailer CT,  
License # ABRA-090258

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9. Case# 17-CC-00106, Bless 7 to 10 Market, 434 Shepherd Street N.W., License # ABRA-  
090618

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10. Case# 17-AUD-00051, Macintyre's Pub, 2621 Connecticut Avenue N.W., Retailer CR,  
License # ABRA-096643

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11. Case# 17-251-00164, The Dirty Goose, 913 U Street N.W., Retailer CT, License # ABRA-  
101299.

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, OCTOBER 4, 2017 AT 1:00 PM  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 4D. SMD 4D06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Midnight Delicatessen*, 4701 Georgia Avenue NW, Retailer B Grocery, License No. 103261.

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2. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: March 29, 2017. ANC 1D. SMD 1D01. The Establishment has three pending investigative matters. No outstanding fines/citations. No conflict with Settlement Agreement. *Brown Street Market*, 3320 Brown Street NW, Retailer A Liquor Store, License No. 104007.

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3. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: February 15, 2017. ANC 2E. SMD 2E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *The Sea Catch*, 1054 31<sup>st</sup> Street NW, Retailer CR, License No. 010810.

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4. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: May 3, 2017. ANC 3C. SMD 3C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *TBD (2649 CT Ave, LLC.)*, 2649 Connecticut Avenue NW, Retailer CR, License No. 106430.

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5. Review Request to Extend Safekeeping of License – Second Request. Original Safekeeping Date: December 21, 2016. ANC 3C. SMD 3C05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *TBD (Formerly The Uptown Tap House)*, 3412 Connecticut Avenue NW, Retailer CT, License No. 104783.

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6. Review Application for new Class C Multipurpose Facility license. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Spin*, 529 14<sup>th</sup> Street NW, Retailer CX, License No. 107858.
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7. Review request for Change of Hours of Operation. ***Approved Hours of Operation:*** Sunday-Thursday 11am to 3am, Friday-Saturday 11am to 4am. ***Approved Hours of Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 11am to 2am, Friday-Saturday 11am to 3am. ***Proposed Hours of Operation:*** Sunday-Thursday 11am to 4am, Friday-Saturday 11am to 5am. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Archibald's/Fast Eddies Billiards Café*, 1520 K Street NW, Retailer CN, License No. 000931.
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8. Review Request for Change of Hours. ***Approved Hours of Operation Inside Premises and for Sidewalk Cafe:*** Sunday 11am to 7pm, Monday-Thursday 11am to 9:30pm, Friday-Saturday 11am to 10:30pm. ***Approved Hours of Alcoholic Beverage Sales and Consumption Inside Premises and for Sidewalk Cafe:*** No Sunday Hours, Monday-Thursday 11am to 9:30pm, Friday-Saturday 11am to 10:30pm. ***Proposed Hours of Operation Inside Premises and for Sidewalk Cafe:*** Sunday-Saturday 7am to 10:30pm. ***Proposed Hours of Alcoholic Beverage Sales and Consumption Inside Premises and for Sidewalk Cafe:*** Sunday-Saturday 11am to 10:30pm. ANC 6C. SMD 6C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Kenny's Smokehouse*, 732 Maryland Avenue NE, Retailer CR, License No. 106942.
- 
9. Review Application for Summer Garden with seating for 11 patrons. ***Proposed Hours of Operation for Summer Garden:*** Sunday 7:30am to 11pm, Monday-Wednesday 7am to 11pm, Thursday-Friday 7am to 12am, Saturday 7:30am to 12am. ***Proposed Hours of Alcoholic Beverage Sales and Consumption for Summer Garden:*** Sunday-Wednesday 10am to 10pm, Thursday-Saturday 10am to 11pm. ANC 2E. SMD 2E03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Booeymonger Restaurant*, 3265 Prospect Street NW, Retailer DR, License No. 102904.
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**\*In accordance with D.C. Official Code §2-547(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.**

**CENTER CITY PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS**

Center City Public Charter Schools is soliciting proposals from qualified vendors for the following:

Center City PCS is interested in expanding our Global Ambassadors After School Program. As such, we are looking for a company to plan all details of the trip. The trip is scheduled for March 26-30, 2018. Trip planning must be complete by October 31, 2017. Considered locations are Cuba, Puerto Rico and Costa Rica.

To obtain copies of full RFPs, please visit our website: [www.centercitypcs.org/contact/request-for-proposal](http://www.centercitypcs.org/contact/request-for-proposal). The full RFPs contain guidelines for submission, applicable qualifications, and deadlines.

Contact Person:

Allison Jones

[ajones@centercitypcs.org](mailto:ajones@centercitypcs.org)

**OFFICE OF THE CHIEF FINANCIAL OFFICER  
Office of Revenue Analysis**

**NOTICE of INCREASES in the TAX YEAR 2018**

**SCHEDULE H MAXIMUM CREDIT and INCOME THRESHOLDS**

**I. The Schedule H Maximum Credit**

Per the D.C. Code § 47-1806, et seq., the Schedule H Maximum Credit amount (pertaining to the Individual Income Tax) for tax year 2018 is adjusted in the following manner:

The Washington Area Average CPI value for Tax Year 2013:	151.66
The Washington Area Average CPI value for Tax Year 2017:	158.27
The percent change in the index for the above time period:	4.36%

**Therefore, for tax year 2018<sup>1</sup>:**

- the Schedule H Maximum Credit amount shall be**
**\$1,025.00**

**II. The Schedule H Income Threshold (Non-Seniors)**

Per the D.C. Code § 47-1806, et seq., the Schedule H eligibility income threshold amount for non-seniors (pertaining to the Individual Income Tax) for tax year 2018 is adjusted in the following manner:

The Washington Area Average CPI value for Tax Year 2015:	155.04
The Washington Area Average CPI value for Tax Year 2017:	158.27
The percent change in the index for the above time period:	2.08%

**Therefore, for tax year 2018<sup>2</sup>:**

- the Schedule H eligibility income threshold amount for non-seniors shall be**
**\$51,000.00**

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<sup>1</sup> Annual dollar amount changes are rounded down to the nearest \$25.00 increment.

<sup>2</sup> Annual dollar amount changes are rounded down to the nearest \$100.00 increment.



**III. The Schedule H Income Threshold (Seniors)**

Per the D.C. Code § 47-1806, et seq., the Schedule H eligibility income threshold amount for seniors (pertaining to the Individual Income Tax) for tax year 2018 is adjusted in the following manner:

The Washington Area Average CPI value for Tax Year 2013:	151.66
The Washington Area Average CPI value for Tax Year 2017:	158.27
The percent change in the index for the above time period:	4.36%

Therefore, for tax year 2018<sup>3</sup>:

- the Schedule H eligibility income threshold amount for seniors shall be **\$62,600.00**

<b>A Summary of Schedule H Credit and Income Threshold Amounts for Tax Year 2018</b>			
	<b>Base Amounts</b>	<b>CPI Adjustment Factor*</b>	<b>2018 Amounts</b>
Schedule H Maximum Credit	\$1,000.00	1.0436	\$1,025.00
Schedule H Income Threshold (non-seniors)	\$50,000.00	1.0208	\$51,000.00
Schedule H Income Threshold (seniors)	\$60,000.00	1.0436	\$62,600.00

\* Source: U.S. Bureau of Labor Statistics, data accessed September 18, 2017

<sup>3</sup> Annual dollar amount changes are rounded down to the nearest \$100.00 increment.

**OFFICE OF THE CHIEF FINANCIAL OFFICER  
Office of Revenue Analysis**

**NOTICE of STATUTORY and SPECIAL  
REAL PROPERTY TAX RATES for TAX YEAR 2018**

**I. Statutory Real Property Tax Rates for Tax Year 2018**

<u>Real Property Tax Class</u>	<u>Statutory Tax Rates Per \$100 of Assessed Value</u>
Class One (residential property)	\$0.85
Class Two (commercial property)	
The first \$3 million in assessed value	\$1.65
The assessed value in excess of \$3 million	\$1.85
Class Three (indefinitely vacant buildings)	\$5.00
Class Four (blighted/condemned buildings)	\$10.00

**II. Special Real Property Tax Rates for Tax Year 2018**

**BOND ACT REQUIREMENT  
Certification of Debt Service Requirement**

In Tax Year 2018, **fourteen percent (14.0%)** of total real property tax collections, by class, shall be dedicated to the repayment of General Obligations Bonds. The recommended special real property tax rates by class for Tax Year 2018 are as follows:

<u>Real Property Tax Class</u>	<u>Special Tax Rates Per \$100 of Assessed Value</u>
Class One (residential property)	\$0.119
Class Two (commercial property)	
The first \$3 million in assessed value	\$0.231
The assessed value in excess of \$3 million	\$0.259
Class Three (indefinitely vacant buildings)	\$0.700
Class Four (blighted/condemned buildings)	\$1.400

**CHILD AND FAMILY SERVICES AGENCY**  
**MAYOR'S ADVISORY COMMITTEE ON CHILD ABUSE AND NEGLECT**

**2018 MONTHLY MEETING SCHEDULE**

This notice outlines the schedule of the regular meetings of the Board of Commissioners of the Mayor's Advisory Committee on Child Abuse and Neglect (MACCAN). The meetings are held in open session and the public is invited to attend. The meetings are held at The District of Columbia Child and Family Services Agency (CFSA), 200 I Street SE, Washington, DC, 20003. For further information, please contact CFSA at 202-724-7100.

<b>DATE</b>	<b>TIME</b>	<b>ROOM NUMBER</b>
<b>Tuesday, January 23, 2018</b>	<b>10:00 AM</b>	<b>Room 1001B</b>
<b>Tuesday, March 27, 2018</b>	<b>10:00 AM</b>	<b>Room 1001B</b>
<b>Tuesday, May 22, 2018</b>	<b>10:00 AM</b>	<b>Room 1001B</b>
<b>Tuesday, July 24, 2018</b>	<b>10:00 AM</b>	<b>Room 1001B</b>
<b>Tuesday, September 25, 2018</b>	<b>10:00 AM</b>	<b>Room 1001B</b>
<b>Tuesday, December 4, 2018</b>	<b>10:00 AM</b>	<b>Room 1001B</b>

**D.C. BILINGUAL PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

D.C. Bilingual Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for the FY17.18 school years:

- Special Education Services-Occupational Therapist

The school must receive a PDF version of your proposal no later than 4:00 pm, Monday, October 9, 2017. Proposals should be emailed to: [bids@dcbilingual.org](mailto:bids@dcbilingual.org)

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. IT Support Services). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION****NOTICE OF FUNDING AVAILABILITY (NOFA)****FISCAL YEAR 2018 (FY18)****Farm Field Trip Grant (FFT)****Request for Application (RFA) Release Date: October 13, 2017**

The Office of the State Superintendent of Education (OSSE), Division of Health and Wellness is soliciting applications for the District of Columbia Farm Field Trip Grant (FFT). The purpose of this grant is to increase the number of District students from schools and childcare centers and homes who visit local farms. Farm field trips provide a hands-on opportunity for students to understand how a variety of foods are cultivated, learn about the importance of consuming locally grown, fresh fruits and vegetables, and explore the landscape within and around the District as a space for growing and raising food.

Eligibility: OSSE will accept applications from nonprofit and CBOs with 501(c)(3) status. Who demonstrate the ability to engage with District of Columbia Public Schools, District of Columbia Public Charter Schools, and Child Development Centers and Homes (specifically children up to the age of five years old and ones that participate in the Child and Adult Care Food Program) from all eight wards of the City.

Award Period: The grant period is two years beginning on January 2, 2018 and ending on September 20, 2019.

Available Funding for Award: The total amount of anticipated funding available for this award period is approximately \$60,000. Grantees must choose to work with either schools (pre-K through grade 12) or child development centers/homes. One \$40,000 award is available for working with schools; one \$20,000 award is available for working with child development centers/homes.

The RFA and all supporting documents will be available on October 13, 2017 at <http://grants.osse.dc.gov> . To receive more information or for a copy of this RFA, please contact:

Tyler Baer  
Farm to School Specialist  
School Programs Team  
Division of Health and Wellness  
Office of the State Superintendent of Education  
Government of the District of Columbia  
810 First St. NE, 4th Floor  
Washington, DC 20002  
Phone: (202) 549-6646  
Email: Tyler.Baer@dc.gov

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION****NOTICE OF FUNDING AVAILABILITY (NOFA)****FISCAL YEAR 2018****Scholarships for Opportunity and Results (SOAR) Act Non-Profit Third-Party Teacher Pipeline Organization Grants****Request for Applications Release Date: October 16, 2017**

The Office of the State Superintendent of Education (OSSE) will issue a Request for Applications (RFA) for Scholarships for Opportunity and Results (SOAR) Act Non-Profit Third-Party Teacher Pipeline Organization (Teacher Pipeline) grant funds. SOAR Act Teacher Pipeline funds are available to third-party non-profit teacher pipeline organizations. The purpose of the funds is to impact the quality and quantity of the teacher supply for DC charter schools. This notice provides information regarding one competitive opportunities.

At least \$1,500,000 is available through the following competitive funding opportunities:

Grants to Non-Profit Third-Party Teacher Pipeline

Eligible applicants are non-profit third-party charter school support organizations that have a demonstrated history of success working with DC charter schools on similar projects. Applicants must use funds to support projects designed to a) recruit, or partner with at least two LEAs or other organizations to recruit, high-quality candidates new to teaching for DC charter school teacher residency or teacher roles, and b) train and/or certify these teachers.. Applicants are required to submit a letter of recommendation from a DC charter school with direct experience working with the organization as well as a complete list of all schools and districts to which the organization has provided similar services. At least \$1,500,000 will be awarded.

Determinations regarding the number of competitive grant awards will be based on the quality and number of applications received and available funding. Successful applicants may be awarded amounts less than requested.

A review panel or panels will be convened to review, score, and rank each application for a competitive grant. The review panel(s) will be composed of external, neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. Each application will be scored against a rubric and applications will have multiple reviewers to ensure accurate scoring. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). OSSE will make all final award decisions.

To receive more information on these grants, please contact:

Ronda Kardash

Office of the State Superintendent of Education  
810 First Street, NE, Eighth Floor, Washington, D.C. 20002  
Email: [Ronda.Kardash@dc.gov](mailto:Ronda.Kardash@dc.gov)

The RFA for these competitive grant programs will be available on OSSE's website at [www.osse.dc.gov](http://www.osse.dc.gov). All applications will be submitted through the Enterprise Grants Management System (EGMS) at [grants.osse.dc.gov](http://grants.osse.dc.gov).

**BOARD OF ELECTIONS****CERTIFICATION OF ANC/SMD VACANCY**

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

**VACANT: 3F06**

Petition Circulation Period: **Monday, October 2, 2017 thru Monday, October 23, 2017**

Petition Challenge Period: **Thursday, October 26, 2017 thru Wednesday, November 1, 2017**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections  
441 - 4<sup>th</sup> Street, NW, Room 250N  
Washington, DC 20001**

For more information, the public may call **727-2525**.



DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS

**Certification of Filling a Vacancy  
In Advisory Neighborhood Commission**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Amber Gove  
Single-Member District 6A04

DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS

**Certification of Filling a Vacancy**  
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections “Board” from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

David Jaffe  
Single-Member District 6E04

**DEPARTMENT OF HEALTH CARE FINANCE  
& DEPARTMENT ON DISABILITY SERVICES**

**PUBLIC NOTICE OF REVISIONS TO THE STATEWIDE  
TRANSITION PLAN FOR THE DISTRICT  
MEDICAID PROGRAM'S HOME AND  
COMMUNITY-BASED SERVICES WAIVERS**

The Directors of the Department of Health Care Finance (DHCF) and Department on Disability Services (DDS), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02) (2012 Repl. & 2013 Supp.), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.01 *et seq.* (2012 Repl.)) hereby give notice of their intent to submit revisions to the Statewide Transition Plan (STP) for the District of Columbia Medicaid program's Home and Community-Based Services (HCBS) Waivers to the Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) for initial and final approval.

CMS regulations, effective March 17, 2014, and published in 79 Fed. Reg. 2948-3039 (Jan. 16, 2014), changed the definition of home and community-based services settings for HCBS Waiver services and required that DHCF and DDS develop and submit to CMS a transition plan identifying how the HCBS Waivers will be brought into compliance with the new outcome-oriented definition of HCBS settings. DHCF and DDS submitted a STP to CMS on March 17, 2015. That plan is available online on the DHCF website at: <http://dhcf.dc.gov/release/announcement-submitted-cms-district-columbia-plan-comply-new-federal-home-and-community> and the DDS website at: <http://dds.dc.gov/publication/dc-statewide-transition-plan-3-17-2015>.

In August 2015, DC received a letter from CMS with comments on the March 2015 STP. That letter is on-line at: <http://dds.dc.gov/publication/cms-letter-dc-statewide-transition-plan-8-13-2015> and included items required in any subsequent update to the STP. A June 2016 update was submitted to CMS on July 8, 2016 for review ahead of approval in accordance with CMS guidelines for the STP approval process.

A draft of the June 2016 update was initially noticed for public comment in the *D.C. Register* and DDS and DHCF websites on February 12, 2016. The entire plan, including all attachments, was posted on the DHCF and DDS websites for public comment on February 19, 2016, with a thirty-day public comment period opening on February 20, 2016. Public comments received on the February draft were included in the last update of the STP as an attachment, and are available

to the public with the updated documents. The June 2016 STP update responded to the public comments received, as well as continuing guidance from CMS.

In August and October 2016, DC received letters from CMS with comments on the June 2016 STP. The letters were posted on the DHCF and DDS websites.

In response to the letters, and as agreed with CMS, the District submitted an update of the STP to CMS on April 28, 2017 after a public comment period. The April 2017 STP update included public comments received in writing and in two public forums during the thirty-day public comment period prior to the resubmission, as well as the District's responses. As agreed with CMS, the resubmission was intended for final approval. The District received feedback from CMS on this update in an August 2017 email. After reviewing the feedback with CMS, DHCF and DDS plan to submit an updated version of the plan for initial and final approval by September 29, 2017. This version of the plan also includes a scheduled data update.

The revised Statewide Transition Plan and the CMS feedback that the revisions respond to may be obtained no later than September 29, 2017 on the DHCF website at <http://dhcf.dc.gov>, the DDS website at <http://dds.dc.gov>, or upon request from Ieisha Gray, Director, Long Term Care Administration, D.C. Department of Health Care Finance, 441 4th St, NW, 10th Floor, Washington D.C. 20001.

Copies of this notice will be published on the DHCF website at <http://dhcf.dc.gov>.

For further information, or to provide feedback on the latest version of the plan, contact Ieisha Gray, Director, Long Term Care Administration, D.C. Department of Health Care Finance, at (202) 442-5818, [ieisha.gray@dc.gov](mailto:ieisha.gray@dc.gov) or Erin Leveton, Program Manager, DDS State Office of Disability Administration, at (202) 730-1754, [erin.leveton@dc.gov](mailto:erin.leveton@dc.gov).

**DEPARTMENT OF HEALTH  
HEALTH PROFESSIONAL LICENSING ADMINISTRATION**

**NOTICE OF MEETING**

Board of Medicine  
September 27, 2017

On SEPTEMBER 27, 2017 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, 2<sup>nd</sup> 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](http://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****PUBLIC NOTICE**

The District of Columbia Board of Respiratory Care (“Board”) hereby gives notice of a change in its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.).

Due to the Columbus Day holiday, the Board’s next regular meeting will be rescheduled to Tuesday, October 10, 2017, from 9:00 AM to 12:00 PM. The meeting will be open to the public from 9:00 AM until 10:00 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 (D.C. Official Code § 2-575(b) (2012 Repl.)), the meeting will be closed from 10:00 AM to 12:00 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 next regular meeting of the Board will be held on Monday, December 11, 2017.

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Health Professional Licensing Administration website at <http://doh.dc.gov/events> and to view additional information and agenda.

**DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND  
TENURE****Judicial Tenure Commission Begins Reviews Of  
Judges Russell F. Canan, Cheryl M. Long, Frank Q. Nebeker, And Joan Zeldon**

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judge Russell F. Canan** of the Superior Court of the District of Columbia, who is retiring and has requested a recommendation for an initial appointment as a Senior Judge. In addition, the Commission is reviewing the qualifications of **Judges Cheryl M. Long and Joan Zeldon** of the Superior Court of the District of Columbia who have requested recommendations for reappointment as Senior Judges. The Commission is also reviewing the qualifications of **Judge Frank Q. Nebeker** of the District of Columbia Court of Appeals who has requested a recommendation for reappointment as a Senior Judge.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Canan, Long, Nebeker, and Zeldon which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, faxed, or e-mailed by **October 30, 2017**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure  
Building A, Room 246  
515 Fifth Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 727-1363  
FAX: (202) 727-9718  
E-Mail: dc.cjdt@dc.gov

In addition, comments may be submitted by an online survey available on the Commission’s website, <https://www.cjdt.dc.gov>, and using the link “Evaluate Candidates”, or using the link <https://www.surveymonkey.com/r/SeniorJudgeSuperiorCourt1216A>, for Judges Canan, Long, and Zeldon, and the link <https://www.surveymonkey.com/r/SeniorJudgeCourtOfAppeals1217>, for Judge Nebeker.

The members of the Commission are:

Jeannine C. Sanford, Esq., Chairperson  
Anthony T. Pierce, Esq., Vice Chairperson  
Hon. Joan L. Goldfrank  
Hon. Colleen Kollar-Kotelly  
William P. Lightfoot, Esq.  
David P. Milzman, M.D.  
Nikki Sertsu

BY: /s/ Jeannine C. Sanford, Esq.  
Chairperson



**KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS**

**Security Services**

Kingsman Academy Public Charter School is seeking competitive proposals for security services. For details and information, email [rfp@kingsmanacademy.org](mailto:rfp@kingsmanacademy.org). **No phone calls please.**

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION  
BOARD OF DIRECTORS  
NOTICE OF PUBLIC MEETING**

**LARUBY Z. MAY, BOARD CHAIR**

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will convene at 10:00 a.m. on Friday, September 29, 2017. The meeting will be held at St. Paul Senior Living at Wayne Place, 114 Wayne Place, SE, Washington, DC 20032. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation’s website (www.united-medicalcenter.com).

**DRAFT AGENDA**

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. SWEARING-IN CEREMONY**
- IV. APPROVAL OF AGENDA**
- V. READING AND APPROVAL OF MINUTES**  
Wednesday, June 28, 2017
- VI. CONSENT AGENDA**
  - A. Dr. Julian R. Craig, Chief Medical Officer
  - B. Dr. Mina Yacoub, Medical Chief of Staff
- VI. EXECUTIVE MANAGEMENT REPORT**  
Luis A. Hernandez, Chief Executive Officer
- VII. COMMITTEE REPORT**  
Finance Committee
- VIII. OTHER BUSINESS**
  - A. Old Business
  - B. New Business
- IX. ANNOUNCEMENTS**

***NOTICE OF INTENT TO CLOSE.*** The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 -575(b)(2)(4A)(5),(9),(10),(11),(14).

**ROOTS PUBLIC CHARTER SCHOOL (RPCS)****INVITATION FOR BID****After School/Extended Hours Academic Enrichment Program**

RPCS is advertising the opportunity to bid on the delivery of a structured afterschool program that provides high quality academic & social enrichment for students, with a focus on STEAM. This program would be free to parents & would cater to a maximum of 60 students in grades 1-5, enrolled in RPCS for the 2017-2018 school year with a possible extension of (4) one-year renewals. This program would take place Monday-Friday from 3:00-6:00 & include a site/program manager & highly-qualified instructors. All elements of the program must align & support the mission of RPCS. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, program components and expectations, etc. may be obtained beginning on **September 25, 2017** from **Rasheki Kuykendall, 202-882-8073** or [rkuykendall@rootspcs.org](mailto:rkuykendall@rootspcs.org). Proposals will be accepted at **15 Kennedy Street, NW Washington, DC 20011** through **October 20, 2017**, no later than **5:00 PM**.

**OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA**  
**RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC**

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after October 1, 2017.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4<sup>th</sup> Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on August 25, 2017. Additional copies of this list are available at the above address or the website of the Office of the Secretary at [www.os.dc.gov](http://www.os.dc.gov).

D.C. Office of the Secretary  
 Recommendations for appointment as DC Notaries Public

Effective: October 1, 2017

Page 2

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Alves Camargo	Carolina de Fatima	Inter-American Investment Corporation 1350 New York Avenue, NW	20577
Ashton	Denise	Daniel Morgan Graduate School of National Security 1620 L Street, NW, Suite 700	20036
Barcikowski	Brian T.	Federal Emergency Management Agency (FEMA) 500 C Street, SW	20472
Bargan	Edna E.	The Salvation Army Divisional Headquarters 2626 Pennsylvania Avenue, NW	20037
Brown	Anne Marie	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Collins	Rashidah	Facebook 1299 Pennsylvania Avenue, NW	20004
Colson	Carla	Morgan Lewis 1111 Pennsylvania Avenue, NW	20004
Cummins	Danne'	United States Postal Service 475 L'Enfant Plaza, SW	20260
Denaburg	Jason	Arent Fox, LLP 1717 K Street, NW	20006
DiMonte	Joseph	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
DiMonte	Nico	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
DiMonte	William	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Fernandez	Kathleen M.	Goodwin Procter, LLP 901 New York Avenue, NW	20001
Ferrerrosa	Madeleine	Carr Workplaces 1325 G Street, Suite 500	20005

D.C. Office of the Secretary  
 Recommendations for appointment as DC Notaries Public

Effective: October 1, 2017

Page 3

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Fitz	Krisztina	Population Services International (PSI) 1120 19th Street, NW, Suite 600	20036
Forney	Shantell	Howard University School of Law 2900 Van Ness Street, NW	20019
Gallagher	Timothy	Douglas Development Corporation 702 H Street, NW	20001
Gaymon	Ruth	Self 4330 D Street, SE	20019
Ginsburg	Justin M.	Self 1632 44th Street, NW	20007
Girmay	Pawlos	Self 3205 15th Street, NE	20017
Gratz	Robert M.	Paragon Title & Escrow Company 1410 Q Street, NW	20009
Gray	Sharon K.	DC Department of Housing and Community Development 1800 Martin Luther King, Jr., Avenue, SE	20020
Habel	Richard	The UPS Store #0057 4200 Wisconsin Avenue, NW	20016
Harkavy	Jon	Risk Services, LLC 2233 Wisconsin Avenue, NW, Suite 310	20007
Harper	Sarah K.	Self (Dual) 2315 Good Hope Court, SE, Apartment 304	20020
Harris	Demetria R.	Self 1441 34th Street, SE	20020
Hayman	Sherelle N.	Federal Bureau of Investigation 935 Pennsylvania Avenue, NW	20535
Hembry	Angel Ciara	Congressional Federal Credit Union 441 2nd Street, SW, Room H-195	20515

**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public**

**Effective: October 1, 2017**

**Page 4**

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Herman	Crystal	9th Street Hospitality 905 U Street, NW, Suite 1	20001
Holmes	Darrie	Self (Dual) 944 Eastern Avenue, NE, Unit 4	20019
Howard	Sonora	Self 4224 Fort Dupont Terrace, SE	20020
Jackson	Antonio	Self 4046 Ely Place, SE	20019
Jenkins	Carolyn M.	American Federation of Teachers (AFT) 555 New Jersey Avenue, NW	20001
Johnson	Natalie	Andrews Federal Credit Union 5935 Georgia Avenue, NW	20011
Jordan	Kelly L.	JRC Integrated Systems, Inc. 1201 M Street, SE, Suite G40	20003
Josey-Baker	Yolanda	Self 1715 Girard Street, NE	20018
Kapoor	Priysha	PNC Bank 1920 L Street, NW	20036
Keith	Teresa	DHS - U.S. Secret Service, Communication Center (HRP) 245 Murray Lane, SW, Building T-5	20223
Key	Roderica	Office of the Deputy Chief Financial Officer 1101 4th Street, SW, Suite W550	20024
Kincer	Leigh	Jemsek Specialty Clinic 2440 M Street, NW, Suite 205	20037
Kryachek-Senese	Olga	Washington Occupational Health Associates, Inc. 1140 19th Street, NW, Suite 700	20036
Kurtz	Sheri Wineglass	Laborers' Health & Safety Fund of North America 905 16th Street, NW	20006



D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries PublicEffective: October 1, 2017  
Page 5

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Li	Michelle	Pension Benefit Guaranty Corporation 1200 K Street, NW	20005
Lloyd	Cynthia	TRG Holdings 1700 Pennsylvania Avenue, NW	20006
Martin	Stephanie	Potomac Place Tower Condominium Unit Owners Association 800 4th Street, SW	20024
Mathis	Nikki Amanda	D.C. Lottery and Charitable Games 2235 Shannon Place, SE, 4th Floor	20020
McDowell	Alexandria	Self 2841 Brentwood Road, NE	20018
McNamara	Daniel J.	BGR Group 601 13th Street, NW, 11th Floor	20005
Merino	Jeannette	Gensler 2020 K Street, NW	20006
Milstein	Kara H.	Cohen and Cohen, PC 1220 19th Street, NW, Suite 500	20036
Mosby	Janet E.	PEER Consultants, P.C. 409 12th Street, SW, Suite 603	20024
Mumbua	Silvia	PNC Bank 1920 L Street, NW	20036
Nathan	Adam	The UPS Store #0057 4200 Wisconsin Avenue, NW	20016
Parker	Latoya Nichole	United States Postal Service 475 L'Enfant Plaza, SW	20260
Perkins	Samuel W.	Tin Shop 1240 9th Street, NW	20001
Purvis	Tiffany	Akin Gump Strauss Hauer & Feld, LLP 1333 New Hampshire Avenue, NW	22301

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries PublicEffective: October 1, 2017  
Page 6

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Quevedo	Daisy	Inter-Con Security 2201 C Street, NW	20520
Raskin	Philip S.	Paragon Title & Escrow Company 1410 Q Street, NW	20009
Regis	Tessa A.	U.S. Department of Education/National Assessment Governing Board 800 North Capitol Street, NW, Suite 825	20002
Reyes	Nelson J.	Paragon Title & Escrow Company 1410 Q Street, NW	20009
Richardson	LaKisha C.	Department of Homeland Security 20 Massachusetts Avenue, NW, Suite 4210	20529
Ripley	Kathryn S.	Klein Hornig, LLP 1325 G Street, Suite 770	20005
Sands	Fredericka	Self 1257 Kearny Street, NE	20017
Sanyer	Patricia	Barker Adoption Foundation 1066 30th Street, NW	20007
Schrader	Linda C.	Blank Rome, LLP 1825 Eye Street, NW	20006
Smedley	Pietro	Parsons Corporation 100 M Street, SE, Suite 1200	20003
Smith	Alexandra K.	Douglas Development Corporation 702 H Street, NW	20001
Smith	Alison G.	Jemsek Specialty Clinic 2440 M Street, NW, Suite 205	20037
Stewart	Geraldine	Self 4539 Eads Street, NE	20019
Stowe II	Franklin L.	Wells Fargo Bank, NA 5100 Wisconsin Avenue, NW	20016

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public

Effective: October 1, 2017

Page 7

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Talbert	Sayana	Weisbrod Matteis & Copley 1200 New Hampshire Avenue, NW, Suite 20743 600
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**OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA**  
**RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC**

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**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public**

Effective: November 1, 2017

Page 2

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Akinnuoye	Henry	Self (Dual) 1214 Franklin Street, NE	20017
Arnett	Hakietta D.	Premium Title & Escrow, LLC 3407 14th Street, NW	20010
Arthur	Shirlian M.	McLean Gardens Condominium 3811 Porter Street, NW	20016
Athanas-Linden	Grace Alexandra	Neal R. Gross & Company 1323 Rhode Island Avenue, NW	20005
Baker	Tracy E.	Self (Dual) 3100 Connecticut Avenue, NW, Apt. #135	20008
Baker	Julie	Ace-Federal Reporters 1625 I Street, NW, Suite 790	20006
Ball	Lasata L.	Hughes Hubbard & Reed, LLP 1775 I Street, NW	20006
Beckwith	Jacqueline	American Wind Energy Association (AWEA) 1501 M Street, NW, Suite 900	20005
Beverly	Crystal	Self 2480 16th Street, NW, Apartment 940	20009
Bingham	Marta	Hazelwood Title & Escrow, Inc 1050 Connecticut Avenue, Suite 500	20036
Bourzikos	Toula	Sage Publishing 2600 Virginia Avenue, NW, Suite 600	20037
Bowles	Andrew J.	Arent Fox, LLP 1717 K Street, NW	20006
Bowman	Christine	Donovan, Bond & Company 2507 Massachusetts Avenue, NW	20008
Branch	Pamela Marie	Childrens Defense Fund 25 E Street, NW	20001
Brown	Kimberly A.	Andrews Kurth Kenyon, LLP 1350 I Street, NW, Suite 1100	20005

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries PublicEffective: November 1, 2017  
Page 3

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Brown	Pamela L.	U.S. House of Representatives B227 Longworth Office Building	20515
Butcher	Linda	Housing Partnership Equity Trust Reit I, LLC 820 First Street, NE, Suite 760	20002
Butler	Bryan T.M.	Planet Depos LLC. 1100 Connecticut Avenue, NW, Suite 950	20036
Bynum	LaChelle A.	Department of Labor/Bureau of Labor Statistics 2 Massachusetts Avenue, NE, G225	20212
Carroll	Donna M.	Association Management Strategies, Inc. 1800 M Street, NW, Suite 400 South	20036
Carter	Stephanie Felice	Premium Title & Escrow, LLC 3407 14th Street, NW	20010
Castellini	Keri M.	Price Benowitz LLP 409 7th Street, NW, Suite 200	20004
Chan	Alexander	Asian Pacific American Veterans Association and Gee How Oak Tin Association 815 6th Street, NW	20001
Chipoco	Jessica	Blue Note Title, Inc. 1120 20th Street, NW, S-300-RLK	20036
Coe	Rebecca	Council on Foreign Relations 1777 F Street, NW	20006
Cooper-Wall	Amelia	Uber Technologies, Inc 1717 Rhode Island Avenue, NW, Suite 400	20017
Corley	Sheri F.	United States International Trade Commission 500 E Street, SW	20436
Crump	Catherine B.	Alderson Court Reporting 1155 Connecticut Avenue, NW	20036
Daniels	Susan J.	Dechert, LLP 1900 K Street, NW	20006
Davis	Michele R.	Combined Properties, Incorporated	

D.C. Office of the Secretary  
 Recommendations for appointment as DC Notaries Public

Effective: November 1, 2017

Page 4

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		1025 Thomas Jefferson Street, NW, 700 East	20007
Davis	Sierra	Branch Banking and Trust Company 317 Pennsylvania Avenue, SE	20003
Edmonds	Sherry H.	Kaplan Kirsch & Rockwell 1001 Connecticut Avenue, NW, Suite 800	20036
Ellis	Courtney D.	Patomak Global Partners 750 17th Street, NW, Suite 1000	20006
Ellis	Gwenever	Self (Dual) 1824 Bryant Street, NE	20018
Ellis-Jones	Deborah L.	U.S. House of Representatives B235 Longworth HOB	20515
Ewell	Natasha	National Partnership for Women & Families 1875 Connecticut Avenue, NW, Suite 650	20009
Fling	Christina	Saxon Collaborative Construction 4837 Wisconsin Avenue, NW	20016
Galdamez	Karen	Council on State Taxation 122 C Street, NW, Suite 330	20001
Gilbert	Shannon R.	Siemens Corporation 300 New Jersey Avenue, NW, Suite 1000	20001
Goguen-Ellis	Deborah E.	Mid-Atlantic Settlement Services 1101 30th Street, NW	20007
Gorton	Heather	Landis Construction 7059 Blair Road, NW	20012
Grandy	Vanessa A.	Federal Reserve Board of Governors 20th & C Streets, NW	20551
Grayck	Samantha C.	Birchstone Moore, LLC 5335 Wisconsin Avenue, NW, Suite 640	20015
Green-Moses	Teresa	United States Conference of Catholic Bishops 3211 4th Street, NE	20017

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public

Effective: November 1, 2017

Page 5

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Griffin	Christine	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Habel	Joseph	The UPS Store 4200 Wisconsin Avenue, NW	20016
Hall	Alfreda	Seward & Kissel, LLP 901 K Street, NW	20001
Hall	Genevieve	Linklaters, LLP 601 13th Street, NW, Suite 400 South	25425
Harrell	Jaqueline	Clark Hill, PLC 1001 Pennsylvania Avenue, NW, Suite 1300 South	20004
Hawkins	Tonya	Navy Federal Credit Union 9th & M Street, SE, Building 218 Ground Floor	20374
Hayward	Vanessa S.	Seyfarth Shaw, LLP 975 F Street, NW	20004
Herrera	Olivia	HRGM Corporation 2021 Shannon Place, SE	20020
Hicks	Jacqueline Renee	U.S. Office of Personnel Management/Office of the General Counsel 1900 E Street, NW, Room 7347	20415
Hill	Ian S.	ET Motors I, LLC 1313 Pennsylvania Avenue, SE	20003
Hill	Stephen J.	Democratic Governors Association 1225 Eye Street, NW, Suite 1100	20005
Hollender	Sarah Lynn	Tzedek DC 4340 Connecticut Avenue, NW, Suite 319	20002
Hydoski	Isaac	Legal Counsel for the Elderly 601 E Street, NW	20049
Jackson	Melvin Howard	U.S Department of Education	



D.C. Office of the Secretary  
 Recommendations for appointment as DC Notaries Public

Effective: November 1, 2017

Page 6

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		400 Maryland Avenue, SW	20202
Jackson	Teri' Patrice	Office of Human Rights 441 4th Street, NW, Suite 570 North	20015
Johnson	Olivia L.	Self 800 Kenilworth Avenue, NE, Apartment 336	20019
Kearney	Gretchen M.	Simmer Law Group, PLLC 600 New Hampshire Avenue, NW, Suite 10-A	20037
Kwak	Johnathan	American Association of State Highway and Transportation Officials 444 North Capitol Street, NW, Suite 249	20001
Lambert	Deborah N.	Self 2605 3rd Street, NE	20002
Lee	Yolanda P.	U.S. Department of Energy 1000 Independence Avenue, SW	20585
Lewis	Jasmine Montaneí	Agriculture Federal Credit Union 1400 Independence Avenue, SW	20250
Lykins	Chelse	OTJ Architects, Inc 555 11th Street, NW, Suite 200	20004
Lyons	Hanae L.	Eagle Bank 2001 K Street, NW	20006
Marcum	Kelly M.	Family Research Council 801 G Street, NW	20001
Marsalek	Dominique	DC Commission on the Arts and Humanities (CAH) 200 I Street, SE, Suite 1400	20003
Mayers	Glen	Kiplinger Washington Editors, Inc 1100 13th Street, NW, Suite 750	20005
Mayle	Angela M.	Monument Realty	

D.C. Office of the Secretary  
 Recommendations for appointment as DC Notaries Public

Effective: November 1, 2017

Page 7

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		750 17th Street, NW, Suite 1100	20006
McCaffrey	Christine	The Brattle Group 1800 M Street, NW, 700 North	20036
McGinn	Kimberly A.	U.S. Small Business Administration 409 3rd Street, SW, Suite 6300	20416
McNerney Jr.	Martin Michael	Self 2217 40th Place, NW, Apartment 4	20007
Mercado	Ariana	Skadden, Arps, Slate, Meagher & Flom, LLP 1440 New York Avenue, NW	20005
Miller	Tara J.	Combined Properties, Inc. 1025 Thomas Jefferson Street, NW, Suite 700 East	20007
Moholt	Emma Christine	Innovative Communications & Strategies 600 Pennsylvania Avenue, SE, Suite 200	20002
Morrison	Laura E.	National Resident Matching Program 2121 K Street, NW, Suite 1000	20037
Nguyen	Kenny	DC Registered Agent, Inc 1120 20th Street, NW, Suite S-300	20036
Offutt	Leesa M.	Beyer Blinder Belle Architects & Planners, LLP 3307 M Street, NW, Suite 301	20007
Oppenheim	Matthew	Warmington Oppenheim Development 1342 Florida Avenue, NW	20009
Paul	Victor D.	Suntrust Bank 6422 Georgia Avenue, NW	20012
Payton	Tammy C.	U.S. Department of Agriculture-Rural Development- Rural Utilities Service 1400 Independence Avenue, SW	20250
Pedroso	Tashima	DC Office of the Inspector General 717 14th Street, NW	20005
Pena	C. Alexandra O.	Self 4941 Tilden Street, NW	20016

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public

Effective: November 1, 2017

Page 8

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Perez	Amy L.	Blackwood of DC, LLC 5151 Wisconsin Avenue, NW, Suite 500	20016
Perry	Travis	Charles Schwab 1100 H Street, NW, Suite 100	20005
Pollard	Jarrod Morgan	Bond Law, PLLC 1100 H Street, NW, Suite 315	20005
Purcell	Tracey	American University 4400 Massachusetts Avenue, NW	20016
Puyogao	Sharon Key Gamo	Inter-Con Security Systems, Inc. 2201 C Street, NW, B243	20520
Rainier	Patrice E.	Paladin Capital Management, LLC 2020 K Street, NW, Suite 620	20006
Rajca	Victoria	Self 1215 Perry Street, NE	20017
Reid-Tappin	Donna	Democratic Governors Association 1225 Eye Street, NW, Suite 1100	20005
Remsen	Alling	The Brookings Institution 1775 Massachusetts Avenue, NW	20036
Rennie	Michelle A.	Self 1022 Bryant Street, NE	20018
Rogers	Margary F.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Rollert	Elizabeth Blythe Apple	Chapman and Cutler, LLP  1717 Rhode Island Avenue, NW, Suite 800	20036
Scannapieco	Salvatore	Parsons Transportation Group, Inc 100 M Street, SE	20003
Schaffer	Christopher	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries PublicEffective: November 1, 2017  
Page 9

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Schneider	Lena Beth	Planned Parenthood of Metropolitan Washington, DC 1225 4th Street, NW	20002
Sendetskaya	Tatiana	Wells Fargo Bank, NA 490 L Street, NW	20001
Sewell	Kayla	Blackwood of DC, LLC 5151 Wisconsin Avenue, NW, Suite 500	20016
Shaheen	Patrick	Self 1260 21st Street, NW, Apartment 1005	20036
Sheppard	Erika	Phrma 950 F Street, NW #500	20004
Sheppard	Shane Z.	Thomas B. Fordham Foundation 1016 16th Street, NW, 8th Floor	20036
Si	Simon P.	DWS Law Group, PLLC 1629 K Street, NW, Suite 300	22041
Sidney-Drumgold	Karen R.	Bureau of Engraving and Printing 301 14th Street, SW	20228
Silver	Khianti	Self (Dual) 4026 Southern Avenue, SE	20020
Smith	Gloria H.	Self 5524 Utah Avenue, NW	20015
Smith	Pheobe	Fair Labor Association 1111 19th Street, NW	20036
Stancil	Sharyum	Grocery Manufacturers Association 1350 I Street, NW, #300	20005
Steiner	Deborah L.	Self (Dual) 2828 6th Street, NW	20017
Stevens	Karla D.	Holland & Knight, LLP 800 17th Street, NW, Suite 1100	20006
Stockland	Keri L.	DKT International 1701 K Street, NW, Suite 900	20006

**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public****Effective: November 1, 2017  
Page 10**

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Strome	Grace Wills	National Partnership for Women & Families 1875 Connecticut Avenue, NW, Suite 650	20009
Taramona	Cecilia	Covington & Burling, LLP 850 10th Street, NW	20001
Taylor	Gail D.	Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue, NW	20001
Tekele	Alemu Legesse	Bank of America 3500 Georgia Avenue, NW	20010
Terry	Daniel Aaron	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Thomas II	William C.	Wells Fargo Bank 490 L Street, NW	20001
Thompson	Evelyn R.	Wells Fargo Bank 3325 14th Street, NW	20010
Tiwari	Tyler M.	The Griffin Firm, PLLC 5335 Wisconsin Avenue, NW, Suite 400	20015
Venson	Anita	Andrews Kurth Kenyon, LLP 1350 I Street, NW, Suite 1100	20005
Visas	Angela	Franklin, Karibjanian & Law, PLLC 1101 17th Street, NW	20036
Vivas	Alexandra	TTR Sotheby's International Realty 1515 14th Street, NW	20005
Wagner	Peter A.	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Webber	Erica L.	Andrews Kurth Kenyon, LLP 1350 I Street, NW, Suite 1100	20005
Whatley	Yvette	Democracy Federal Credit Union 200 Independence Avenue, SW	20201
White	Sandra C.	Forest City Washington, LLC	

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public

Effective: November 1, 2017

Page 11

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		301 Water Street, SE, Suite 201	20003
Williams	Chrisa	U.S. Court of Appeals for the Federal Circuit 717 Madison Place, NW	20439
Williams Jr.	William Lee	Self 6431 Western Avenue, NW	20015
Williamson	Ethan A.	U.S. Green Building Council 2101 L Street, NW, Suite 500	20037
Williamson, Jr.	Michael	First Book 1319 F Street, NW, Suite 1000	20004
Wilson	Lorie B.	DOEE 1207 Taylor Street, NW	20011
Wood	Victoria A.	Hunton & Williams 2200 Pennsylvania Avenue, NW	20037
Woodfork	Stephanie	United States Postal Service 475 L'Enfant Plaza, SW	20260
Wright	Dyone	Suntrust Bank 6422 Georgia Avenue, NW	20012
Younis	Mohammed	Wells Fargo 444 North Capitol Street, NW	20001

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

## BOARD OF DIRECTORS

## NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, October 5, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4<sup>th</sup> floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at [www.dcwater.com](http://www.dcwater.com).

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or [linda.manley@dcwater.com](mailto:linda.manley@dcwater.com).

## DRAFT AGENDA

- |   |                       |
|---|-----------------------|
| 1. <b>Call to Order</b>                                 | Board Chairman        |
| 2. <b>Roll Call</b>                                     | Board Secretary       |
| 3. <b>Approval of September 7, 2017 Meeting Minutes</b> | Board Chairman        |
| 4. <b>Committee Reports</b>                             | Committee Chairperson |
| 5. <b>General Manager's Report</b>                      | General Manager       |
| 6. <b>Action Items</b><br>Joint-Use<br>Non Joint-Use    | Board Chairman        |
| 7. <b>Other Business</b>                                | Board Chairman        |
| 8. <b>Adjournment</b>                                   | Board Chairman        |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Order No. 19047-A on the Motion for Reconsideration and Rehearing in the Appeal of Michael Cushman (Appeal No. 19047)**, pursuant to 11 DCMR §§ 3100 and 3101<sup>1</sup>, from the administrative decision of the Department of Consumer and Regulatory Affairs (“DCRA”) in the issuance of Certificate of Occupancy 1501450 allowing seven “private parking garages” and four “open parking spaces” for a “total of 11 parking spaces” located in the R-4 District at premises 20 14th Street, N.E. (Square 1035, Lot 810).

**HEARING DATE:** July 21, 2015

**DECISION DATES:** July 21, 2015, September 15, 2015, and September 22, 2015

**ORDER ISSUANCE DATE:** April 29, 2016

**RECONSIDERATION DATE:** June 21, 2016

**ORDER DENYING MOTION FOR  
REHEARING AND RECONSIDERATION**

On April 29, 2016, the Board of Zoning Adjustment (“the Board”) issued a final order concerning the appeal brought by Michael Cushman (“the Appellant”). The Appellant challenged DCRA’s decision to issue a Certificate of Occupancy (“C of O”) for an alley lot owned by Ramin Taheri (“the Owner”) allowing seven “private parking garages” and four “open parking spaces”. Specifically, the Board found that, as related to the appeal of the seven parking spaces, the appeal was untimely filed and was therefore dismissed. As related to the appeal of the four open parking spaces, the Board found that the appeal was timely, and therefore considered the challenge on its merits.

During the public hearing on the merits, the Appellant argued that the four open parking spaces constituted a “parking lot”, a use that was not allowed as a matter of right and a use that was permissible only with special exception approval by the Board. The Zoning Administrator (“ZA”) testified at the hearing, stating that the parking spaces would not be considered a “parking lot” because, under the Regulations, a “parking lot” is open to all persons willing to pay a temporary fee. (Ex. 47, Order, p.4, Finding of Fact 14.) The ZA also testified that he considered the open parking spaces to be a second principal use on the lot – separate from the parking garage use – and a use that was allowed as a matter of right. The Board agreed with the

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<sup>1</sup> This and all other references to the appeal in Order No. 19047 are to provisions that were in effect the date the appeal was heard and decided by the Board of Zoning Adjustment (the 1958 Regulations), but which were repealed as of September 6, 2016 and replaced by new text (the 2016 Regulations). The repeal of the 1958 Regulations has no effect on the validity of the Board’s original decision or the validity of Order No. 19047.



ZA, and ultimately voted to sustain DCRA's decision and deny that portion of the appeal relating to the open parking spaces. The Board issued its final written order on April 29, 2016.

### **The Motion for Rehearing and Reconsideration**

On May 9, 2016, the Appellant-Movant<sup>2</sup> filed a timely Motion for Rehearing and Reconsideration (the "Motion") of the Board's order. (*See* 11 DCMR § 3126, part of the Board's Rules of Practice and Procedure in place at the time the Motion was filed.) (Ex. 49.) Pursuant to 11 DCMR § 3126.5, also in place when the Motion was filed, any "Response" from a party must be filed within seven days after the Motion was served and filed. The Owner, who was an automatic party to the appeal and who participated in the appeal, filed a timely Response opposing the Motion. (Ex. 50.) While DCRA was a party to the appeal and participated fully during the proceedings, DCRA made no submissions concerning the Motion.

#### **Motion for Rehearing**

Subsection 3126.6 provides that a rehearing may not be granted unless "new evidence is submitted that could not reasonably have been presented at the original hearing." The Owner contends that no such evidence was presented by the Movant, and the Board agrees with this contention. The Movant claims that he was not able to "determine what rationale was used to [deny] the appeal" until the Board's written Order was issued. However, the legal reasoning employed by the Board does not constitute "new evidence" within the meaning of § 3126.6.

The Movant specifically refers to a previous Board decision, *Application No. 17906 of Se Y. Jeong* (2009), which the former Board Chairman referenced during the Board's deliberations of the appeal, and which the Movant claims was incorrectly cited as precedent. It is true that the Chairman mentioned *Jeong* when reasoning that there could be two principal uses at one property. It is also true that in the *Jeong* case, unlike the instant case, the Board found there were *not* two principal uses at one property. However, the Movant's points are not pertinent for three reasons. First, the mention of a past Board decision during oral deliberations does not constitute newly discovered evidence, or any evidence at all. Second, the Chairman's reference to the *Jeong* case was not erroneous, as claimed by the Movant, but was instructive. The *Jeong* case explained that a particular use was "*either a part of a principal use or a stand-alone principal use, depending on its magnitude.*" (*Jeong*, at p.4.) Third, the fact that *Jeong* was mentioned during deliberations does not mean that the Board ultimately relied on the case as precedent. In fact, the case was not even mentioned in the Board's written Order, and it is the written decision which is the final decision of the Board. (*See*, 11 DCMR § 3125.3.)

#### **Motion for Reconsideration**

Subsection 3126.4 of the 1958 Regulations requires that a motion for reconsideration must "state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the

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<sup>2</sup> The Appellant will be referred to herein as the Movant.

motion and the relief sought". The Movant asserts the Board erred by relying on the ZA's testimony and analysis. However, the Board found the ZA's analysis to be reasonable.

The Board found that the private parking garages on an alley lot were matter-of-right uses, citing 11 DCMR §§ 201.1(o) and 330.5(a). The Board also found that the Zoning Regulations were silent as to whether open parking spaces on an alley lot are a matter of right use. The ZA testified that there was no material difference between a private parking space that is covered and a private parking space that is not covered. The ZA also noted that both a private garage and a private open parking space differed from a parking *lot*<sup>3</sup>, where parking was arranged on an hourly or daily basis. (Hearing Transcript "Tr.", July 21, 2015, p.81.) The Board extrapolated from the ZA's analysis and found that private open parking spaces on an alley lot which, as here, were being leased on at least a monthly basis, were properly considered a distinct principal matter of right use.

The Movant fails to identify how the Board's interpretation is unreasonable or erroneous. Instead, he restates many of the arguments made during the appeal. While the Appellant remains opposed to the issuance of the C of O, he has not presented new grounds which require reconsideration of the Board's decision.

For the reasons stated above, it is **ORDERED** that the Motion for Rehearing and Reconsideration is **DENIED**.

**VOTE: 3-1-1** (Marnique Y. Heath, Jeffrey L. Hinkle, and Frederick L. Hill in support of the Motion to DENY Rehearing and Reconsideration; Robert E. Miller opposed to the Motion to Deny; Anita Butani D'Souza not participating.)

**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:** September 18, 2017

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.

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<sup>3</sup> Under 11 DCMR §199, a "parking lot" was defined as "a tract of land used for the *temporary* parking of motor vehicles when the use is not accessory to any other use. (Emphasis supplied.)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Appeal No. 19081 of ANC 1C**, as amended,<sup>1</sup> pursuant to 11 DCMR §§ 3100 and 3101<sup>2</sup>, from a May 13, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permits No. B1412288, B1601746, and B1602713 to allow the conversion of a one-family dwelling into a four-unit apartment house in the R-5-B District at premises 1828 Ontario Place, N.W. (Square 2583, Lot 438).

**HEARING DATES:** November 17, 2015, December 22, 2015<sup>3</sup>  
**DECISION DATE:** December 22, 2015

**DISMISSAL ORDER**

**PRELIMINARY MATTERS**

On July 12, 2015, ANC 1C (the "Appellant") filed this appeal with the Board of Zoning Adjustment (the "Board"). The Appellant appealed the issuance of Building Permit No. B1412288 (the "Original Permit") by the Department of Consumer and Regulatory Affairs ("DCRA") to 1828 Ontario Place LLC (the "Property Owner"). The permit authorized the conversion of a one-family dwelling into a four-unit apartment house, including the construction of a retaining wall and two-story addition to the existing structure at the premises 1828 Ontario Place, N.W. (Square 2583, Lot 438) (the "Subject Property").

ANC 1C alleged that the approval of the Original Permit was issued in violation of the off-street parking requirements of 11 DCMR § 2101 and the parking space dimension requirements of § 2115.1, as it allowed an existing parking space that does not meet the dimension requirements to serve as one of two required parking spaces. (Exhibit 3.) On November 12, 2015, the Original Permit was revised as Building Permit No. B1601746 ("First Revised Permit"), which included revised parking plans that corrected the dimensions of the existing substandard parking space.

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<sup>1</sup> When originally filed, the subject of the appeal was Building Permit No. B1412288. The appeal was amended to include the two subsequent revisions to the Original Permit, Building Permits No. B1601746 and B1602713, which were issued during the course of the appeal proceedings.

<sup>2</sup> 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 provisions that were in effect on the date this Application was heard and decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text ("the 2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's decision or the validity of this order.

<sup>3</sup> The appeal was originally scheduled for October 20, 2015, and postponed to November 17, 2015 at the Appellant's request. At the public hearing session on November 17, 2015, the Appellant made an oral motion to postpone the hearing in order to consider recent revisions of the permit at issue. The Board granted the motion and postponed the hearing to December 22, 2015.

(Exhibit 35.) At the Appellant's request, the Board postponed the hearing on November 17, 2015 to allow the Appellant additional time to examine the First Revised Permit and raise any zoning issues introduced by the permit revisions.

Accordingly, the Appellant incorporated the First Revised Permit into its appeal and filed a Revised Prehearing Statement raising structural issues and arguing that these issues would prevent the Property Owner from executing the approved, revised parking plan. (Exhibit 38.) Subsequently, the permit was again revised on December 11, 2015 as Building Permit No. B1602713 ("Second Revised Permit") to address these alleged structural deficiencies by including bracing beams and a report from a structural engineer. (Exhibit 41B.)

The Property Owner filed a motion to dismiss the appeal for lack of jurisdiction and for mootness. (Exhibit 41.) DCRA joined the Property Owner's motion to dismiss on the same grounds. (Exhibit 43.) On December 22, 2015, the Board granted the motion to dismiss, on the basis that the zoning issues initially raised by the Appellant were made moot by the subsequent permit revisions and that the remaining issues raised by the Appellant at this stage of the proceedings are outside of the Board's jurisdiction.

Notice of Appeal and Notice of Hearing. By memorandum dated July 28, 2015, the Office of Zoning ("OZ") provided notice of the appeal to the Zoning Administrator ("ZA") at DCRA, the D.C. Office of Planning, Advisory Neighborhood Commission ("ANC") 1C, the ANC within which the Subject Property is located and the Appellant in this case, ANC Single Member District 1C04, the Councilmember for Ward One, and the owner of the Subject Property. On July 29, 2015, OZ mailed a Notice of Public Hearing to the Councilmember for Ward One, ANC 1C, DCRA, and the owner of the Subject Property.

Party Status. Consistent with 11 DCMR § 3199.1, the parties in this proceeding are ANC 1C, ("Appellant"), DCRA, and 1828 Ontario Place LLC (the "Property Owner"). ANC 1C authorized Michael Rafferty and Stacie Desai to represent the ANC in a report dated October 16, 2015. (Exhibit 29.) Michael Rafferty also filed a request for intervenor status on October 30, 2015. (Exhibits 32 and 33.) At the hearing on December 22, 2015, Mr. Rafferty clarified that he was authorized by ANC 1C as a representative, but also wished to be considered an individual appellant in this case. The Board granted that request, and dismissed his separate request for intervenor status.

ANC Report. By letter dated July 11, 2015, ANC 1C indicated that it had considered a resolution to file the appeal at a duly noticed public meeting, with a quorum present, and approved the resolution by a vote of 8-0. (Exhibit 8.) In the resolution, the ANC challenged the issuance of Building Permit No. B1412288, alleging that conversion of a one-family dwelling to a four-unit apartment house must first demonstrate the presence of two, nine-foot by 19-foot parking spaces. ANC 1C also submitted a Prehearing Statement in advance of the hearing on November 17, 2015, providing additional detail and evidence to support its claim that the approved parking plan violates 11 DCMR §§ 2101.1 & 2115.1. (Exhibit 34.) After the subsequent revision to the

permit on November 12, 2015, ANC 1C filed a Revised Prehearing Statement arguing that the First Revised Permit was issued in error and raising structural issues that would prevent the Property Owner from implementing the revised parking plan as approved. (Exhibit 38.)

### FINDINGS OF FACT

1. The property is located at 1828 Ontario Place N.W. (Square 2583, Lot 438) (the “Subject Property”). The Subject Property is currently improved with a one-family dwelling.
2. The Subject Property is located in the R-5-B Zone District.
3. The Property Owner applied for a building permit for conversion of the one-family dwelling into a four-unit apartment building on September 22, 2014. That application for Building Permit No. B1412288 (the “Original Permit”) received zoning approval on May 13, 2015, and it was issued on July 20, 2015. (Exhibit 22.)
4. The approved plans associated with the Original Permit included two parking spaces: one standard, nine-foot by 19-foot space and one substandard eight-foot by 16-foot space within an existing detached garage structure.
5. The comments by the DCRA zoning reviewer note that the substandard space was “approved by ZA Matt LeGrant based upon existing conditions in existing garage.” (Exhibits 3 and 24.) The reviewer’s notes also indicate that approval was based on supplemental information provided in a traffic and parking report provided by the Property Owner as a part of the permit application.
6. ANC 1C (the “Appellant”) filed an appeal of the Original Permit to the Board on July 12, 2015. With regard to the Zoning Regulations, the Appellant’s claims of error in the Original Permit are centered on violations of 11 DCMR §§ 2101.1 and 2115.1.
7. Subsection 2115.1 provides that the dimensions for required parking spaces shall be nine feet by 19 feet; the Appellant argues that the existing, substandard parking space within the detached garage structure violates this requirement.
8. Subsection 2101.1 requires that a four-unit apartment house in the R-5-B District provide two off-street parking spaces; the Appellant argues that, because the existing, substandard space cannot be counted towards this parking requirement, the Property Owner provides only one of the required parking spaces and fails to meet this provision.
9. In a report dated October 16, 2015, ANC 1C authorized Stacie Desai and Michael Rafferty to represent the Appellant at the public hearing. (Exhibit 29.)

10. At the ZA's request and in response to the issues raised by the Appellant, the Property Owner submitted a revised building permit application to correct the dimensions of the existing, substandard parking space from eight-feet by 16-feet, as provided in the Original Permit application, to nine-feet by 18-feet, corresponding to the newly-received information on the interior space in the existing garage structure.
11. Building Permit No. B1601746 ("First Revised Permit") was issued on November 12, 2015, as a revision of the Original Permit. The parking plan in the First Revised Permit contains two parking spaces: one standard, nine-foot by 19-foot space and one substandard nine-foot by 18-foot space within an existing detached garage structure. (Exhibit 35.)
12. DCRA approved the substandard, nine-foot by 18-foot parking space based on the Property Owner's assertion that the existing, detached garage structure predated the adoption of the Zoning Regulations in 1958. Accordingly, the parking space would be grandfathered as an existing nonconformity and, along with the additional parking space provided on the Property, would meet the requirement in § 2101.1 to provide two off-street parking spaces. (Exhibit 36.)
13. At the November 17, 2015 hearing, the Board granted the Appellant's oral motion to postpone the hearing in order for the Appellant to further review the First Revised Permit and to raise, in writing, any zoning issues created by the approved revisions. (BZA Transcript for the Public Hearing of November 17, 2015 at 184-190.)
14. In the Appellant's Revised Prehearing Statement, filed on December 8, 2015, ANC 1C alleged that the issuance of the First Revised Permit was in error because the parking space dimensions in the approved parking plan requires removal of a portion of the party wall shared by the detached garage structure on the Subject Property and a garage structure on the adjacent property. The Appellant argues that this removal process will cause structural harm to the existing garages. (Exhibit 38, sub-exhibit D.) Based on these alleged structural issues, the Appellant argued that the approved, revised parking plan would be impossible to execute and that correcting the structural issues would result in a plan that violates the Zoning Regulations. (Exhibit 38.)
15. Though the Appellant's Revised Prehearing Statement indicates that changes to the Property Owner's plans in response to the structural issues raised could potentially lead to violations of the Zoning Regulations, the Appellant did not argue that the approved, revised plans currently violate the Zoning Regulations.
16. The structural issues raised by the Appellant pertain to the alleged violations of the Building Code, 12A DCMR.
17. On December 11, 2015, Building Permit No. B1602713 ("Second Revised Permit") was issued as a "revision to building permit B1412288 and B1601746 to remove one brick wythe

from each side of garage party wall, install pressure treated ledger board at top of garage wall with two by ten pressure treated framing at 24 inches on center.” (Exhibit 41B.) The Second Revised Permit application included stamped structural plans and a report from a structural engineer confirming that the “structural integrity of the wall will remain sound.” (Exhibit 41B.)

18. A representative of the Appellant testified at the Board’s public hearing on December 22, 2015, that both the First Revised Permit and the Second Revised Permit are also the subject of proceedings before the Office of Administrative Hearings. (BZA Transcript for the Public Hearing of December 22, 2015 at 42-43.)

## CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. Therefore, the Board has no authority to hear an appeal that is not based upon an interpretation of a zoning regulation. (*See Appeal No. 18239 of ANC 6A* (2011).) Further, the Board is restricted from considering moot questions. (11 DCMR § 3100.7.) Before the Board, a case is considered moot “when the legal issues present are no longer ‘live’ or when the parties lack a legally cognizable interest in the outcome.” (*N St. Follies, Ltd. P’ship v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 548, 588 (D.C. 2008) (citing *Thorn v. Walker*, 912 A.2d 1192, 1195 (D.C. 2006).)

With regard to Building Permit No. B1412288 (“Original Permit”), the Appellant argued that the parking plan was approved in violation of the off-street parking requirements of 11 DCMR § 2101.1 and the parking space dimension requirements of 11 DCMR § 2115.1. The Board finds that the zoning issues originally raised by the Appellant were made moot with the issuance of Building Permit No. B1601746 (“First Revised Permit”), which included a revised parking plan. The corrections made to the measurements in the approved plan address the issues raised by the Appellant in the initial appeal and therefore those issues are no longer “live” before the Board. Accordingly, those moot questions cannot be considered by the Board. (11 DCMR § 3100.7.)

Although the original zoning issues were rendered moot by the issuance of the First Revised Permit, the Board provided the Appellant the opportunity to amend the appeal and raise any new zoning issues arising specifically from the revisions made to the Original Permit. After reviewing the First Revised Permit, the Appellant did not dispute that the revision cured the off-street violations it asserted, and therefore the appeal has become moot on that ground.

However, the Appellant raised the issue that the approved, revised parking plan would require removal of a portion of the party wall in the detached garage structure, though this removal was not shown or approved in the First Revised Permit plans. The Appellant argued that the removal of portions of the party wall would cause structural harm to the existing garages. Further, the

Appellant claimed that correcting the structural issues would result in a plan that would violate the Zoning Regulations.

In advance of the Board's public hearing on December 22, 2015, Building Permit No. B1602713 ("Second Revised Permit") was issued as a further revision to the plans, in order to reflect the removal of one brick wythe from each side of the party wall of the garage structure and the installation of ledger board and framing within the structure. In addition, the Second Revised Permit included stamped structural plans and a report from a structural engineer. During the hearing on December 22, 2015, the Appellant did not concede that the Second Revised Permit sufficiently addressed the structural issues raised regarding the First Revised Permit, but indicated that both the First Revised Permit and Second Revised Permits are the subject of proceedings with the Office of Administrative Hearings as to that issue.

The Board need not determine whether the structural issues raised by the Appellant are addressed by the Second Revised Permit, as the Appellant does not allege violations of the Zoning Regulations, but rather issues pertaining to Building Code requirements. The Board is authorized to hear and decide an appeal where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) Therefore, the Board dismisses the remaining issues raised in the appeal for lack of jurisdiction.

As to the possibility that future zoning violations might occur, that assertion is at this point purely speculative and not ripe for adjudication.

As the Board has determined that the issues raised by the Appellants are moot, outside the Board's jurisdiction, or unripe, the Board grants DCRA and the Property Owner's motions to dismiss the appeal.

It is hereby **ORDERED** that this appeal be **DISMISSED**.

**VOTE:**       **3-0-2** (Marnique Y. Heath, Marcie Cohen<sup>4</sup>, and Jeffrey L. Hinkle to Dismiss; Frederick L. Hill not present, not voting; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** September 19, 2017

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.

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<sup>4</sup> Commissioner Cohen did not participate in the November 17, 2015 hearing of the appeal, but indicated at the December 22, 2015 hearing that she read the record in order to participate.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19545 of Christian Walker**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck addition in the RF-1 Zone at premises 520 Hobart Place N.W. (Square 3054, Lot 70).

**HEARING DATE:** Applicant waived right to a public hearing

**DECISION DATE:** September 13, 2017

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

A memorandum, dated May 25, 2017, from the Zoning Administrator, certifying the required relief, accompanied the application. (Exhibit 10.)

Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board's expedited review calendar for decision without hearing as a result of the Applicant's waiver of its right to a hearing. (Exhibit 2.)

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") 1B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on September 7, 2017, at which a quorum was in attendance, ANC 1B voted 10-0-0 to support the application. (Exhibit 38.)

The Office of Planning ("OP") submitted a timely report, dated September 1, 2017, in support of the application. (Exhibit 36.) The District Department of Transportation ("DDOT") submitted a timely report, dated August 31, 2017, expressing no objection to the approval of the application. (Exhibit 37.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by Subtitle Y §§ 401.7 and 401.8. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

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 under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck

addition in the RF-1 Zone. No parties appeared at the public meeting 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 E §§ 5201, 304.1, and 306.1, 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, 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 8 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May to APPROVE; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** September 15, 2017

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.

**BZA APPLICATION NO. 19545**

**PAGE NO. 2**

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. 19546 of Oluseyi Ademiluyi**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5203.3 from the roof top architectural element requirements of Subtitle E § 206.1(a), the penthouse requirements of Subtitle C § 1500.4, the uniform penthouse height requirements of Subtitle C § 1500.9, and the penthouse setback requirements of Subtitle C § 1502.1(c)(2) to construct a rear addition to an existing one-family dwelling in the RF-1 Zone at premises 2521 12th Street N.W. (Square 2865, Lot 140).

**HEARING DATE:** September 6, 2017  
**DECISION DATE:** September 13, 2017

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 4 (original) and 35 (revised).) 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") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a timely report that indicated that at a regularly scheduled, properly noticed public meeting on August 3, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the rooftop architectural relief and penthouse relief, but recommended denial of the rear addition relief. (Exhibit 32.) The relief opposed by the ANC was withdrawn.

The Office of Planning ("OP") submitted a timely report dated August 25, 2017, recommending approval of the rooftop architectural relief and penthouse relief, and noted the withdrawal of the request for rear addition relief. (Exhibit 39.) At the decision meeting on September 13, OP confirmed that the revisions to the plans would require relief from Subtitle C § 1500.9 and that OP would support that relief. The Applicant orally amended the application to add that additional special exception relief and it was approved.

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<sup>1</sup> The Applicant amended the application to add special exception relief from the penthouse wall height (C § 1500.9) and penthouse setback (C § 1502.1(c)(2)) requirements and to withdraw a request for relief from Subtitle E § 205.4 for rear addition. (Exhibit 35.) The Applicant further amended his application orally at the meeting to add a special exception for uniform penthouse height (C § 1500.9). The caption reflects the relief as amended.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 37.)

A letter in opposition from four neighbors on Euclid Street was submitted to the record. (Exhibit 40.) At the hearing on September 6, testimony in opposition was provided from Peter Delate regarding penthouse design. Also, testimony was provided from Heidi Ridgeley in support of the plan revision to remove the 18-foot rear extension.

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 under Subtitle E § 5203.3 from the roof top architectural element requirements of Subtitle E § 206.1(a), the penthouse requirements of Subtitle C § 1500.4, the uniform penthouse height requirements of Subtitle C § 1500.9, and the penthouse setback requirements of Subtitle C § 1502.1(c)(2) to construct a rear addition to an existing one-family dwelling in the RF-1 Zone. The only parties to the case were the Applicant and the ANC. 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 §§ 1500.4, 1500.9, and 1502.1(c)(2), and Subtitle E §§ 5203.3 and 206.1(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 33 AS MODIFIED BY EXHIBIT 43, WITH THE SLOPED ROOF DESIGN OPTION ON SHEET A007c.**

**VOTE:**           **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Michael G. Turnbull (by absentee ballot) 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.

**BZA APPLICATION NO. 19546**

**PAGE NO. 2**

**FINAL DATE OF ORDER:** September 15, 2017

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. 19546  
PAGE NO. 3**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19551 of Jared and Lorilee Binstock**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 205.4 , to construct a three-story rear addition in the RF-1 Zone at premises 1349 South Carolina Avenue S.E. (Square 1039, Lot 66)<sup>1</sup>.

**HEARING DATE:** September 13, 2017  
**DECISION DATE:** September 13, 2017

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 10.) 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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, 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 July 11, 2017, at which a quorum was present, the ANC voted 9-0-2 to support the application. (Exhibit 30.)

The Office of Planning ("OP") submitted a timely report, dated August 25, 2017, in support of the application. (Exhibit 38.) The District Department of Transportation ("DDOT") submitted a timely report, dated August 11, 2017, expressing no objection to the approval of the application. (Exhibit 35.)

Three letters of support for the application were submitted to the record from the adjacent neighbors. (Exhibits 12, 13, and 44.) The Capitol Hill Restoration Society submitted a letter in support of the application. (Exhibit 41.)

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<sup>1</sup> At the Applicant's request, this application was removed from the Expedited Review calendar of September 6, 2017, and scheduled for public hearing on September 13, 2017. (Exhibits 39 and 40.)

Two letters expressing opposition and concerns about the application were submitted to the record by neighbors. (Exhibits 36 and 37.)

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 Subtitle E § 5201 from the rear yard requirements of Subtitle E § 205.4, to construct a three-story rear addition 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 and Subtitle E §§ 5201 and 205.4, 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 6 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May to APPROVE; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** September 20, 2017

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

BZA APPLICATION NO. 19551

PAGE NO. 2



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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19552 of Alden Whittaker**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck addition to an existing, nonconforming one-family dwelling in the RF-1 Zone at premises 609 Orleans Place N.E. (Square 855, Lot 358).

**HEARING DATE:** Applicant waived right to a public hearing

**DECISION DATE:** September 13, 2017

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6.) 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.

Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board's expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

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") 6C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on July 12, 2017, at which a quorum was in attendance, ANC 6C voted 6-0-0 to support the application. (Exhibit 52.)

The Office of Planning ("OP") submitted a timely report dated September 1, 2017, in support of the application. (Exhibit 61.) The District Department of Transportation ("DDOT")

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<sup>1</sup> The caption was corrected to include the nonconforming structure requirement of Subtitle C § 202.2, as shown in the originally submitted self-certification form. (Exhibit 6.)

submitted a timely report, dated September 1, 2017, expressing no objection to the approval of the application. (Exhibit 60.)

Twenty-five letters of support of the application from neighbors were submitted to the record. (Exhibit 36.)

Two letters in opposition to the application were submitted to the record from the neighbors residing at 610 Orleans Place, N.E. and 612 Morton Place, N.E. (Exhibits 57 and 58.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by Subtitle Y §§ 401.7 and 401.8. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

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 Subtitle E § 5201 from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck addition to an existing, nonconforming one-family dwelling in the RF-1 Zone. No parties appeared at the public meeting 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 E §§ 5201, 304.1 and 306.1, and Subtitle C § 202.2, 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 REVISED PLANS AT EXHIBIT 8 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter G. May to APPROVE; one Board seat vacant.)

**BZA APPLICATION NO. 19552  
PAGE NO. 2**

**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:** September 20, 2017

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. 19552**

**PAGE NO. 3**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF FILING**  
**Z.C. Case No. 07-13G**  
**(Lowe Enterprises – Modification of Significance to Previously Approved PUD @**  
**65 I Street, S.W., Square 643-S, Lot 801)**  
**September 18, 2017**

**THIS CASE IS OF INTEREST TO ANC 6D**

On September 11, 2017, the Office of Zoning received an application from Lowe Enterprises (the “Applicant”) for approval of a modification of significance to a previously approved planned unit development (“PUD”) for the above-referenced property.

The property that is the subject of this application consists of Lot 801 in Square 643-S in southwest Washington, D.C. (Ward 6), on property located at 65 I Street, S.W. (the former Randall School).

The Applicant proposes modifications and refinements to the approved design in order to enhance and enlarge the central courtyard, improve building access and circulation, and refine the architectural design of the residential building. The Applicant also proposes minor adjustments to the approved uses.

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.

**District of Columbia REGISTER – September 29, 2017 – Vol. 64 - No. 39 009463 – 009768**