

## **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:**

**CHAPTER 93 HOME HEALTH AIDES**

9300	GENERAL PROVISIONS
9301	CERTIFICATION
9302	TERM OF CERTIFICATION
9303	CRIMINAL BACKGROUND CHECK
9304	APPLICATION FOR CERTIFICATION
9305	CERTIFICATION BY EXAMINATION
9306	CERTIFICATION BY ENDORSEMENT
9307	RENEWAL OF CERTIFICATION
9308	INACTIVE STATUS; REACTIVATION OF CERTIFICATION
9309	REINSTATEMENT OF EXPIRED CERTIFICATION
9310	TEMPORARY CERTIFICATION FOR PURPOSES OF REINSTATEMENT
9311	PERFORMANCE REVIEWS; CONTINUING EDUCATION OR IN-SERVICE
9312	RESERVED
9313	ASSIGNMENT AND DELEGATION OF NURSING CARE TASKS TO HOME HEALTH AIDES
9314	RESERVED
9315	HOME HEALTH AIDE TASKS
9316	RESERVED
9317	DISCIPLINE
9318	RESERVED
9319	RESERVED
9320	STANDARDS FOR HOME HEALTH AIDE TRAINING PROGRAMS
9321	SUPERVISED PRACTICE OF HOME HEALTH AIDE TRAINEES
9322	RESERVED
9323	RESERVED
9324	HOME HEALTH AIDE PROGRAM APPROVAL PROCEDURES
9325	PERIODIC REVIEW OF APPROVED PROGRAMS
9326	RESERVED
9327	HOME HEALTH AIDE TRAINING PROGRAM CURRICULUM
9328	MINIMUM QUALIFICATIONS FOR HOME HEALTH AIDE TRAINEES
9329	RESERVED
9330	CLOSING OF EDUCATION AND TRAINING PROGRAMS
9331	RECORDS RETENTION
9332	RESOURCES, FACILITIES, AND SERVICES
9399	DEFINITIONS

**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.
- 9300.2 Chapter 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) of this title shall supplement this chapter.

**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.

**9302 TERM OF CERTIFICATION**

- 9302.1 Subject to § 9301.1, a certification issued pursuant to this chapter shall expire at 11:59 p.m. of October 30 of each odd-numbered year.
- 9302.2 The Director may modify the renewal system pursuant to § 4006.3 of chapter 40 of this title and may modify the date on which a certification expires.

**9303 CRIMINAL BACKGROUND CHECK**

- 9303.1 A person applying for certification as an HHA shall undergo a criminal background check (CBC) prior to issuance of the certification.
- 9303.2 After issuance of an initial certification, the applicant shall undergo an additional background check every four (4) years or as determined by the Department of Health.
- 9303.3 The applicant shall pay a fee for the CBC as established by the Department of Health.
- 9303.4 The Board shall review the results of a CBC of a person if, within the seven (7) years preceding the CBC, the person has been convicted in the District of Columbia, or in any state or territory of the United States where the person has worked or resided, of any of the following offenses or their equivalent:
- (a) Murder, attempted murder, or manslaughter;
  - (b) Arson;

- (c) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
- (d) Burglary;
- (e) Robbery;
- (f) Kidnapping;
- (g) Theft, fraud, forgery, extortion, or blackmail;
- (h) Illegal use or possession of a firearm;
- (i) Trespass or injury to property;
- (j) Rape, sexual assault, sexual battery, or sexual abuse;
- (k) Child abuse or cruelty to children;
- (l) Adult abuse, neglect, or exploitation; or
- (m) Unlawful distribution or possession with intent to distribute, of a controlled substance.

**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:**

9308.1 An HHA with an active certification may request to be placed on inactive status.

**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.



9309.3 If an HHA does not hold a certification in another jurisdiction and 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.**

**9312 [RESERVED]**

**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.

9313.4 Nursing tasks that inherently involve on-going assessment, interpretation, or decision making that cannot be logically separated from one or more procedures shall not be delegated to the HHA.

**9314 [RESERVED]**

**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.

**9316 [RESERVED]**

**Section 9317, DISCIPLINE, is amended as follows:**

**Subsection 9317.3 is amended to read as follows:**

- 9317.1 The Board of Nursing may revoke, suspend, or deny recertification of any HHA who is convicted, during a period of certification, of any of the crimes as listed in § 9303.4 or any act specified in D.C. Official Code § 3-1205.14 (2012 Supp.).
- 9317.2 In addition to any other disciplinary action it may take, impose a civil penalty of not more than five thousand dollars (\$5,000) per violation or file a letter of concern if the Board believes there is insufficient evidence to support direct action against the HHA.
- 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.

**9318 [RESERVED]**

**9319 [RESERVED]**

**Section 9320, STANDARDS FOR HOME HEALTH AIDE TRAINING PROGRAMS, is amended as follows:**

9320.1 No institution shall provide HHA training in the District of Columbia unless its training program has been approved by the Board.

9320.2 The following types of institutions may apply for approval to provide HHA training:

- (a) Private degree-granting educational institutions operating or incorporated in the District of Columbia that are licensed by the Education Licensure Commission pursuant to the Educational Institution Licensure Act of 1976; (D.C. Law 1-104; D.C. Official Code §§ 31-1301, *et seq.* (2001 Ed. and 2012 Supp.));
- (b) Private non-degree-granting post secondary schools operating in the District of Columbia which are licensed by the Education Licensure Commission;

- (c) District public vocational or trade schools;
- (d) District public universities or colleges; and
- (e) Health care facilities licensed as training facilities by the Education Licensure Commission and operating in the District of Columbia that have received no adverse actions during the preceding two (2) years.

**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.

9320.4 All HHA training programs shall have adequate faculty and clinical facilities to provide supervised clinical experience with early, realistic exposure to job requirements. The clinical experience shall include the full range of skills needed in the workplace.

**Section 9321, SUPERVISED PRACTICE OF HOME HEALTH AIDE TRAINEES, is amended as follows:**

9321.1 An HHA trainee may practice only in accordance with the Act and this chapter.

**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.

9321.4 A trainee shall identify himself or herself as a trainee before practicing.

9321.5 A trainee shall not receive compensation of any nature, directly or indirectly, from a client or client's family member.

9321.6 The nurse supervising the trainee shall be responsible for all practice by a trainee during the period of supervision and may be subject to disciplinary action for violations of the District of Columbia Health Occupations Revision Act of 1985, effective March 15, 1986 (Act) (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01, *et seq.* (2007 Repl. & 2012 Supp.)) or this chapter by the trainee.

9321.7 The Board may deny an application for certification by, or take other disciplinary action against, a trainee who is found to have violated the Act or this chapter. The Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the trainee.

**9322 [RESERVED]**

**9323 [RESERVED]**

**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.

9325.2 The Board shall re-evaluate HHA training programs at least once a year.

**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.

9325.4 The Board shall assess each training program on the basis of visits to the facility, the progress of the training program, annual reporting, and any other information deemed appropriate by the Board.

**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.
- 9325.9 The Board may consider reinstatement or approval of a training program upon submission of satisfactory evidence that the program meets the standards set forth in this chapter.
- 9325.10 The Board may investigate complaints made against a program and may conduct hearings in connection with such complaints.
- 9325.11 Any Board action for suspension or withdrawal of a training program's approval shall take place only upon notice to the program and the opportunity for a hearing in accordance with D.C. Official Code § 3-1205.14 (2012 Supp.).

**9326 [RESERVED]**

**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.

9327.9 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.

**9329 [RESERVED]**

**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:**

- 9331.1 Each HHA training program shall maintain an accurate and appropriate system of record keeping.
- 9331.2 Each HHA training program shall ensure that administrative and personnel records are protected against loss, destruction, and unauthorized review.

**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:**

- 9332.1 Each HHA training program shall maintain resources, facilities, and services which are adequate to accommodate the training program. The resources, facilities, and services shall include, but are not limited to:
  - (a) Adequate temperature controls in each training facility;
  - (b) Clean and safe conditions of the facility's premises;
  - (c) Adequate space to accommodate faculty;
  - (d) Adequate lighting in each facility; and
  - (e) Sufficient and adequate equipment for the program's needs, including audio-visual equipment and equipment needed for simulating client care.

**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:**

9399.1 As used in this chapter, the following terms shall have the meanings ascribed:

**Abuse** - any willful or reckless act or omission that causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to, physical or emotional injury, death, or financial exploitation of a client.

**Activities of daily living** - self-care activities which a person performs independently, when able, to sustain personal needs or to participate in society.

**Applicant** - a person applying for a certification to practice as an HHA.

**Board** - the Board of Nursing, established by § 204 of the Act, D.C. Official Code § 3-1202.04 (2012 Supp.).

**Clinical activities** - faculty-planned and guided learning activities designed to assist students in meeting course objectives and to apply nursing knowledge and skills in the direct care of clients, including clinical conferences, planned learning activities in community facilities and residences, and other resources. Clinical activities shall not include skills lab activities.

**Clinical preceptor** - an individual meeting the requirements of this chapter who is an employee of a clinical agency and works with a trainee in a clinical setting to facilitate student learning in a manner specified in a signed written agreement between the agency and the educational institution.

**Clinical preceptorship** - an organized system of clinical experiences which allows an HHA trainee to be paired with a clinical preceptor for the purpose of attaining specific learning objectives.

**Conditional approval** - the approval status that is granted for a time period specified by the Board to an HHA training program to correct deficiencies when the training program has failed to meet or maintain the requirements and standards of this chapter.

**Continuing education** - systematic learning experiences designed to augment the knowledge, skills, and attitudes of the HHA. Content of continuing education reflects current and emerging concepts, principles, practices, theories, and nursing related research, information beyond that which is taught in the training program. Continuing education is not basic skill training, competency training, local policy administrative procedures training, or update briefings.

**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.

**Direct supervision** - supervision in which the supervisor is physically present and accessible in the immediate client area and is available to intervene if necessary.

**Director** – Director of the D.C. Department of Health.

**Education Licensure Commission** – Mayoral appointed regulatory, consumer protection authority responsible for public protection with regard to legitimate quality education in the District of Columbia. The Commission establishes standards for postsecondary educational operations, authorizes operations, approves programs, issues or denies licenses to, and oversees all private postsecondary educational institutions in the District of Columbia. The Commission is the Mayor’s only entity authorized to issue educational licenses and is charged with advising the Mayor and City Council with respect to postsecondary educational needs of the District.

**Endorsement** - the process of issuing a certification to an HHA applicant who is registered or certified by a state board and recognized by the Board as a qualified professional according to standards that were the substantial equivalent at the time of the certification to the standards for that profession set forth in this chapter and who has continually remained in good standing with the Board from the date of certification until the date of certification in the District.

**General supervision** - supervision in which the supervisor is available for consultation either in person or by a communication device, but is not necessarily physically present on the premises.



**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.

**Home health aide (HHA)** - an individual, including a personal care aide (PCA), 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 nursing or nursing related services to clients in a home setting or in assistive living facilities.

**Immediate supervision** – supervision in which the supervisor is physically with the supervisee and is either discussing or observing the supervisee’s practice.

**In-service** – learning experiences provided in the work setting for the purpose of assisting staff members in performing their assigned functions in that particular agency or institution; and consists of activities intended to assist the HHA to acquire, maintain, or increase competence in fulfilling the assigned responsibilities specific to the expectations of the employer.

**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.

**Neglect** – any act or omission which causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to the injury, death, or financial exploitation of a consumer.

**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.

**Reinstatement** – reissuance of an expired HHA certificate.

**Skills laboratory activities** – faculty guided activities planned for students in a school/campus laboratory that simulates the activities provided by the HHA. The activities include demonstrations and return demonstrations using equipment and supplies that are used in the home for the purpose of attaining required psychomotor skills.

9399.2 The definitions in § 4099 of chapter 40 of this title are incorporated by reference into and are applicable to this chapter.