

## DEPARTMENT OF BEHAVIORAL HEALTH

### NOTICE OF FINAL RULEMAKING

The Director of the Department of Behavioral Health (DBH), as the successor-in-interest to the Department of Mental Health, pursuant to the authority set forth in Sections 5113, 5117(10) and (13), and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.06(10) and (13), and 7-1141.7 (2012 Repl.)), hereby gives notice of the adoption of Chapter 38 (Mental Health Community Residence Facilities) to Title 22 (Health), Subtitle A (Mental Health), of the District of Columbia Municipal Regulations (DCMR). The effective date of these rules will be 90 days after the date of publication of this notice in the *D.C. Register* to allow sufficient time for providers to comply with the new requirements.

This Final Rulemaking will supersede and repeal Title 22-B DCMR Chapter 38 (Community Residence Facilities for Mentally Ill Persons), and will locate rules governing mental health community residence facilities (MHCRFs) in Title 22-A DCMR, together with other mental health rules. The proposed Chapter 38 also includes licensing provisions specifically applicable to MHCRFs, including prerequisites for obtaining a license, licensure categories, the inspection process, licensure renewal, licensure conversion, suspension, or revocation, and hearing requirements. Therefore, the provisions of Title 22-B DCMR Chapter 31 pertaining to licensing of healthcare and community residence facilities regulated by the Department of Health, will no longer apply to MHCRFs regulated by DBH. The rules update the current 22-B DCMR Chapter 38 rules adopted in 1995, to reflect changes in the Department's policies and requirements for MHCRFs since that time. More specifically, the rules address general eligibility requirements for living in a MHCRF, different categories of MHCRFs offering different levels of care, environmental and physical plant requirements, Operator and Residence Director responsibilities, staffing qualifications and requirements, and requirements for records maintenance. The final rulemaking also provides additional requirements to comply with the Center for Medicare and Medicaid Services' residential setting requirements.

The second Notice of Proposed Rulemaking was published on September 1, 2017 in the *D.C. Register* at 64 DCR 008608. The Department received written comments from the Legal Counsel for the Elderly Long Term Care Ombudsmen and University Legal Services. The comments and any changes are addressed below. To the extent the Department made changes in the Final Rulemaking, the purpose was to clarify the intent, meaning, or application of the Rule. The minor changes reflected below do not substantially change the intent, meaning, or application of the proposed rule(s) or exceed the scope of the prior second Notice of Proposed Rulemaking.

These rules shall apply as of May 1, 2018.

Both commenters expressed concern that § 3823.19 conflicted with §§ 3810.3 and 3810.5. The Department clarified in § 3810.5 that an MHCRF must only report the consumer's choice not to take prescribed medicine to the Director and the consumer's CSA.

A commenter stated that § 3823.13 does not align with the Center for Medicare and Medicaid Services (CMS) rule 42 C.F.R. § 441.301(c)(4)(vi)(D). The Department did not agree with this statement as the District of Columbia's implementation plan which included the changes reflected in this Final Rulemaking was recently approved by CMS.

A commenter questioned whether § 3823.30 meaningfully ensured residents the freedom to control their own schedules in light of house rules. The Department did not feel any additional language was necessary because § 3841.3 already protects residents' freedom by providing, "In accordance with a person-centered treatment plan, each resident shall have the freedom and support to control his or her own schedule and activities."

A commenter expressed concern that § 3834.8 should include language to allow for a variety of beverages as well as food, and language providing MHCRF residents significant input in weekly menus and opportunities to cook. The Department added the word "beverages" to the regulation. The Department believes that the current language adequately requires resident input in menu planning and opportunities to cook are provided in § 3841 "Resident Activities."

A commenter requested that the caveat in § 3825.6 "unless determined to be inappropriate for placement based on other criteria enumerated in this chapter" be removed. The Department agreed and eliminated the caveat because the appropriateness of placement is already incorporated into the ADA analysis.

A commenter requested that that the Department add the following language to § 3827.4, "The MHCRF shall comply with all applicable requirements under the ADA, including but not limited to, accessibility requirements for bedrooms, living spaces, bathrooms, and removal of architectural barriers (e.g. installation of lifts and ramps)." The Department believes that the existing language, "The MHCRF shall comply with all applicable requirements under the ADA," is adequate and that the additional language would impose accessibility requirements on older homes that are not otherwise subject to accessibility standards under the ADA. While the Department is responsible for providing a range of housing options that comply with the ADA and provide community-based housing for individuals with both physical and mental disabilities, the language above would require each individual home to meet accessibility requirements, which exceeds the ADA's mandate.

A commenter stated that in § 3825.8 that if an MHCRF denies a resident habitation, the MHCRF should provide written reasons for the denial. The Department agreed and removed "upon request" for the person denied admission.

A commenter indicated that the Department should require a new clean mattress for each resident, provision of basic kitchen staples (coffee and sugar), and provision of toiletries (e.g. shampoo, conditioner, toothpaste) necessary to meet consumers' personal hygiene and maintenance. The Department believes that a new mattress for each resident would be cost prohibitive; therefore, the Department has required a clean mattress and new mattress cover. Furthermore, the Department did not feel that the regulation should specify the types of beverages and condiments. Instead, the Department felt that each home should have the flexibility to organize the menu around the residents' preferences at each home. Finally, the

regulations require that the MHCRFs stock the bathrooms with soap, toilet paper and clean hand towels; however, shampoo and toothpaste are personal toiletries subject to individual preferences that are best left to the resident to purchase.

A commenter detailed that all MHCRFs should have a fire safety plan that includes emergency preparedness planning for all residents, regardless of ability. Sections 3833.3 and 3833.4 already require such emergency plans.

Both commenters expressed concern about representative payee relationships between MHCRFs and MHCRF residents. After much discussion in the community subsequent to the first Notice of Proposed Rules, the Final Rule grandfathers Social Security Administration-approved representative payee relationships existing prior to the new regulations but prohibits MHCRF operators from applying to be representative payees in the future to avoid conflict of interest and misuse of consumer funds.

A commenter requested that § 3838.2 specifically state, “A resident's Personal Needs Allowance shall be used solely for the resident's personal needs pursuant to D.C. Mun. Regs. tit. 29 § 1450 and cannot be considered income available to pay for MHCRF costs, including rent.” The Department agreed and added the requested language since it simply restates an existing District regulation.

A commenter requested that DBH clarify § 3838.9 that all cost of living increases to the State Optional Payment should be prorated to MHCRF residents and should not go to the MHCRF for room, board, and care. The Department did not agree with this comment since the Department of Health Care Finance is the responsible agency and D.C. Official Code § 4-205.49 specifically states that the supplemental payment shall be used for room, board, and care.

A commenter indicated that in § 3858.6, reduced staffing during non-peak periods or when the number of residents is reduced leads to the informal or formal requirement of day programs. The Department does not agree with this comment since § 3841.5 specifically states that attendance at a day program is not mandatory for consumers.

A commenter requested that § 3845.3 be expanded to include other types of punishment. The Department did not agree with this comment since this section concerned restraint and seclusion and the existing language adequately prohibits these practices.

A commenter expressed concern that § 3860.4 does not state that any and all discharges are governed by Title III of the Nursing Home and Community Residence Facility Residents' Protection Act. The Department did not agree with this comment since the law is referenced in § 3861.2, “MHCRF Transfer, Discharge, and Relocation.”

A commenter stated that the various levels of care can confuse residents and cause providers to initiate involuntary discharges to a higher level of care and recommend that providers educate residents on various services provided at different residences. The Department has the authority to pre-approve discharges and issues levels of care for each resident. Therefore, the Department believes that there is little risk to residents of discharges based upon confusion on the level of

care since the Department must pre-approve. The Department will further address this matter in its quarterly training with providers.

A commenter requested that MHCRFs should retain the resident's property for a minimum of thirty (30) days upon a move, transfer, or discharge, increased from ten (10) days, to give residents ample time to collect their personal items left on the premises. The Department agreed to extend for an additional ten (10) days upon request.

A commenter stated that § 3838.3 does not have enough legal safeguards. The commenter did not propose any further legal safeguards and the Department believes the correct safeguards are in place in § 3838.3.

A commenter expressed concern over the removal of the previously published § 3803.2, which provided that an “authorized official shall conduct the entry and inspection with the least possible disruption to the residents.” The Department does not believe this change is necessary since its staff is already trained to conduct entry and inspection in a reasonable manner with the least possible disruption to residents. Further, the proposed standard is too subjective as some actions such as emergency discharges for health and safety reasons are necessary even though an operator may view them as disruptive. Finally, the Department does not see a need for this because it has not received any complaints from residents that the inspectors have been disruptive.

A commenter related that the current language of “single sex” in § 3805.11 might unknowingly lead to discrimination against certain LGBTQ groups, such as the transgender population. The Department did not agree with this comment as the Department previously addressed this issue in DBH policy Number 641.1 “Gender Identity and Expression” when providing services in the District.

A commenter expressed concern over §§ 3816.2, 3815, and 3816.3 notice periods, since no system is in place to provide for residents living in soon-to-be suspended MHCRFs a safe living arrangement. The Department did not agree with this comment as D.C. Official Code §§ 44-1003.05 and 44-1003.08 adequately address this issue.

A commenter suggested that § 3861.5 should specify a time frame regarding when the MHCRF is required to provide notification for a conference meeting preceding a twenty-one (21) day involuntary transfer or discharge meeting. The Department agrees and language now requires the MHCRF to give ten (10) days notice.

A commenter expressed concern over § 3861.9, that residents “shall be allowed to return to the MHCRF within ninety (90) days” under specified conditions suggests that MHCRFs may wrongfully prevent residents from returning to MHCRF facilities following a hospital admission. The Department did not agree with this comment as the ninety (90) day rule is based upon the Social Security Administration rules for temporarily institutionalization benefits to be paid to the MHCRF for holding the bed space. Once Social Security Administration withdraws funding after ninety (90) days, the Department cannot require that the bed be held.

A commenter expressed concern that §§ 3861.10 through 3861.15 violate the process and protections established by Community Residences Facility Protection Act by altering notice requirements. The Department did not agree with this comment as §§ 3861.10 through 3861.15 are not for permanent discharges as contemplated by the Act, but for very serious short-term emergency situations that may happen after hours, on weekends, or in a crisis situation.

A commenter recommended developing a consumer resident council to provide input into rules, food and other aspects of life in MHCRFs. The Department agrees that this is an interesting idea and would like to further develop this concept with the commenter and stakeholder community prior to mandating it in a rule.

Finally, the Department clarified in § 3826.8 that an effective pest control program is one that complies with D.C. laws and regulations and prohibits placing traps or pesticides directly on resident bedding.

**Title 22-A DCMR, MENTAL HEALTH, is amended by adding a new Chapter 38 to read as follows:**

**CHAPTER 38 MENTAL HEALTH COMMUNITY RESIDENCE FACILITIES**

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**3800 PURPOSE AND SCOPE OF CHAPTER**

3800.1 The purpose of these regulations is to provide for the health, safety, and person-centered welfare of individuals with mental illness residing in mental health community residence facilities (MHCRFs). Each MHCRF shall meet the requirements of this chapter as of its effective date, unless otherwise specified in this chapter. No person shall operate an MHCRF in the District of Columbia without a license issued by the Department.

3800.2 A MHCRF is a publicly- or privately-owned community residence facility that provides twenty-four hour (24 hr.) supervised care and a home-like environment in a house or apartment building for individuals, age eighteen (18) or older:

- (a) With a principal diagnosis of mental illness;
- (b) Who require twenty-four hour (24 hr.) on-site staff supervision, monitoring, personal assistance with activities of daily living, lodging, and meals; and
- (c) Who are not in the custody of the Department of Corrections.

3800.3 There shall be three (3) principal categories of MHCRFs designed to meet different levels of resident need and preference licensed under and subject to this chapter: Supported Residence (SR), Supported Rehabilitative Residence (SRR) and Intensive Residence (IR). In addition to meeting the other requirements of this chapter, the SR shall comply with § 3857, the SRR shall comply with § 3858 and the IR shall comply with § 3859.

3800.4 In addition, this chapter provides for short-term transitional beds, which shall meet the minimum licensure requirements for a SR facility, as well as the additional requirements in § 3860. A MHCRF with transitional beds shall be designated “SR-Transitional.”

3800.5 The number of residents allowed to reside in a MHCRF shall be as follows:

- (a) An SR, SRR or IR MHCRF may have up to eight (8) residents, exclusive of staff.
- (b) Notwithstanding § 3800.5(a), an SR MHCRF with a regular license that was issued prior to December 23, 1991 may continue to house the number of residents previously authorized, up to twenty-five (25) residents exclusive of staff;
- (c) An SR with transitional beds may have up to ten (10) residents in accordance with § 3860;
- (d) The Director may grant a waiver to the residency limitations set forth in (a) or (c) upon a determination that:
  - (1) The facility has demonstrated that it meets the other requirements of this chapter and will be able to meet residents' needs and provide a home-like non-institutional environment;
  - (2) The health, safety, and welfare of residents will not be adversely affected; and
  - (3) The authorized increase is consistent with the occupancy limits in the Certificate of Occupancy for the facility.

3800.6 This chapter shall not apply to:

- (a) Crisis beds;
- (b) Independent living arrangements; or
- (c) Supported independent living arrangements.

3800.7 A MHCRF license is not an entitlement. The issuance of new licenses is subject to the availability of funds and the Department's determination that new or additional MHCRFs are necessary to adequately serve the public behavioral health system.

**3800 REQUIREMENT TO HOLD A MHCRF LICENSE**

3801.1 No person shall operate or hold himself or herself out as operating a MHCRF in the District of Columbia, whether public or private, profit or not-for-profit, without being licensed as required by this chapter. Any person who violates this section is subject to civil fines and penalties in accordance with Title 16 DCMR, Chapters 31, 32, and 35.

**3802 MHCRF LICENSE AND INSPECTION FEES**



3802.1 Each MHCRF license shall be issued in the name of the Operator of the MHCRF business. A MHCRF license is not transferable and shall be valid only with respect to the Operator and only for the facility location identified on the license.

3802.2 Each MHCRF license shall be designated Supported Residence or SR, Supported Rehabilitative Residence or SRR, Intensive Residence or IR, or SR-Transitional and shall be issued as a regular, provisional or restricted license.

3802.3 License fees for an initial MHCRF license and for each renewal license are as follows:

(a)	1 to 5 Beds	
	Annual Fee	\$50
	Late Fee	\$25
(b)	6 to 10 Beds	
	Annual Fee	\$75
	Late Fee	\$37.50
(c)	11 to 25 Beds	
	Annual Fee	\$100
	Late Fee	\$50

3802.4 A fee in the amount of fifty dollars (\$50) shall be charged to a MHCRF for each inspection after the first follow-up annual license renewal inspection. This includes follow-up inspections based on the Operator's prior non-compliance.

### **3803 DISTRICT GOVERNMENT RIGHT OF ENTRY AND INSPECTION**

3803.1 The Director, any other duly authorized official of the Department, or any other District government agency having jurisdiction or responsibility over a MHCRF or a resident in a MHCRF, after presenting credentials of identification and authority issued by the Director of the relevant District agency, may, either with or without prior notice, enter and inspect the premises of the following:

- (a) A MHCRF licensed pursuant to this chapter;
- (b) A facility for which an Operator is applying for licensure as a MHCRF to determine the facility's compliance with applicable requirements; and
- (c) Subject to § 3803.5, any unlicensed premises that the Director or any other District agency has reason to believe is being operated or maintained as a community residence facility in violation of this chapter or other applicable laws of the District of Columbia.

- 3803.2 The authorized official shall have access to the following:
- (a) Facility administrative, personnel, financial, and resident records required by this chapter including records required by §§ 3824, 3825, 3837, 3838, 3839, 3840, 3846, 3848, and 3850 through 3855;
  - (b) Facility staff;
  - (c) Facility residents;
  - (d) The entire premises including all indoor rooms and outdoor areas; and
  - (e) Any other information necessary to determine the facility's compliance with this chapter or other applicable law.

- 3803.3 When conducting an inspection pursuant to this section, the authorized official may:
- (a) Interview and make inquiries of staff and residents, on or off-site, relevant to compliance with all applicable requirements;
  - (b) Scan or make copies of any facility records, subject to federal and District law pertaining to the confidentiality of medical records; and
  - (c) Photograph or videotape conditions at the facility that the official reasonably believes to be in violation of this chapter or any other applicable law or regulation.

3803.4 Any licensed MHCRF Operator that refuses an authorized official entry and inspection to the premises violates this Chapter and shall be subject to fines, the suspension or revocation of the facility's license, and the removal of residents.

3803.5 The Director may refer a case involving an unlicensed facility that the Director determines is operating as a MHCRF to the Office of the Attorney General for the District of Columbia for appropriate legal action.

## **3804 ELIGIBILITY REQUIREMENTS FOR LICENSURE**

3804.1 In order to qualify for a MHCRF license, an Applicant shall:

- (a) Submit a completed application pursuant to § 3805 to the Department together with all required documents;
- (b) Ensure that the facility meets all structural and environmental requirements set forth in this chapter, or otherwise required by law,

including correcting any deficiencies identified in the pre-licensure inspection pursuant to § 3806;

- (c) Demonstrate that, prior to accepting residents, the Operator will have the required staff in place who have met all applicable criminal background check, education, training, reference, health, and certification requirements pursuant to § 3850;
- (d) Demonstrate that, if the Operator will not personally manage the facility and serve as Residence Director, or if the Operator is a corporation, agency, or partnership, the Operator has employed a Residence Director who shall be responsible for the management and operation of the facility as provided in § 3852 and § 3853;
- (e) Demonstrate that the Operator and the Residence Director (where there is a separate Residence Director) have the ability to direct and operate a MHCRF as evidenced by the applicable background checks, criminal background checks, proof of requisite education, training, certifications, experience, and letters of reference pursuant to §§ 3850 and 3851;
- (f) Demonstrate the ability to comply with this chapter, the Licensure Act, and the Human Rights Act; and
- (g) Demonstrate that the facility meets all applicable District of Columbia Construction Code requirements, including the Property Maintenance Code, Fire Prevention Code, and Housing Code requirements, by submitting appropriate documentation of Department of Consumer and Regulatory Affairs (DCRA) and Fire and Emergency Medical Services Department (FEMSD) inspections and approvals, as described in § 3805.4 (h) and (i) and the application for licensure.

## **3805 APPLICATION FOR LICENSE**

3805.1 An application for licensure as a MHCRF shall be submitted in the name of the Operator, who shall have an ownership or leasehold interest in the real property where the MHCRF will be located. The application shall be in the format established by the Department. If the Operator is a corporation or agency, the Applicant shall designate an officer or director who shall act on behalf of the corporation or agency for all matters pertaining to licensure. If the Operator is a partnership, the application shall identify all partners and the designated authorized agent for the partnership.

3805.2 An application for initial licensure as a MHCRF shall be submitted to the Director at least thirty (30) days prior to the date that the Operator intends to begin operations. A renewal application shall be submitted in accordance with § 3813.

3805.3

The application shall include:

- (a) The Applicant's name, address, telephone number, e-mail address, Social Security number or federal tax identification number, birth date (or date and state of incorporation), and whether the Applicant is an individual, partnership, or corporation;
- (b) The identity of the owner, and contact information, of the building in which the facility is located;
- (c) The identity of the Residence Director for the facility, including Social Security number and birth date, if the Operator will not be personally managing the facility or if the Operator is a corporation, agency, or partnership;
- (d) The names of the persons submitting the letters of reference for the Operator and Residence Director required by § 3805.4(a);
- (e) Requested information pertaining to the building in which the facility will be operated including its address;
- (f) The maximum number of beds at the facility;
- (g) All documentation required under § 3805.4;
- (h) Any additional information requested by the Director on the application form, including information specific to an SR, SRR, IR, or SR - Transitional;
- (i) The signature of the Applicant or a legally authorized signatory of the Applicant if the Applicant is a corporation, agency or partnership; and
- (j) The license fee required by § 3802.

3805.4

The application for licensure shall be accompanied by the following documents:

- (a) Three (3) letters of reference on a form prescribed by the Department for the Operator and for any Residence Director of the facility. The letters of reference shall be from unrelated persons who have known the Operator or Residence Director for five (5) years or more and can verify their experience working with persons who are mentally ill;
- (b) Documentation of required education, experience, training, and certifications for the Operator and Residence Director, as set forth in §§ 3850 and 3851;

- (c) A Certificate of Incorporation or Certificate of Authority for corporations or documentation of appropriate partnership registration with the DCRA Corporations Division, as applicable;
- (d) An original, current Certificate of Good Standing for a corporation;
- (e) Verification of required insurance coverage from the company or broker providing insurance, including the dates of coverage and the specific coverage provided;
- (f) Verification of compliance with criminal background check requirements, as set forth in §§ 3850.10 through 3850.14, conducted within forty-five (45) days prior to commencing work at the facility for each “unlicensed person” as defined in this chapter, including an Operator, Residence Director, employee, contract worker or volunteer, who, upon licensure of the facility, will work in the facility or have unsupervised access to the facility and residents.
- (g) A copy of a valid Certificate of Occupancy from DCRA for any MHCRF that will house more than six (6) residents;
- (h) Proof of a satisfactory pre-licensure inspection and approval by DCRA (and FEMSD as applicable) for Housing Code and Construction Codes compliance, including a copy of the inspection report and proof of abatement by DCRA and FEMSD of all deficiencies identified during the inspection(s). The approval shall be dated not more than forty-five (45) days prior to the date of submission. The pre-licensure inspection(s) shall demonstrate compliance with requirements of the Housing Code and Construction Codes, specifically including the Property Maintenance Code and Fire Prevention Code requirements applicable to a community residence facility;
- (i) Copies of all building, electrical, plumbing, or other permits and approvals required by DCRA under the Construction Codes for new construction, renovations, repairs, or other work conducted at the facility within the twelve (12) months prior to applying for licensure;
- (j) A Clean Hands Certification on a form prescribed by DCRA;
- (k) A statement from the Office of Tax and Revenue that the Applicant does not owe taxes in excess of one hundred dollars (\$100.00) or has entered into an approved payment plan, pursuant to the Clean Hands Act;
- (l) Proof of the Applicant’s ownership of the premises where the facility will be located or, if the building is not owned by the Applicant, a copy of a

current lease agreement for the building naming the Applicant as lessee and authorizing operation of a community residence facility;

- (m) A copy of the standard residency contract for room, board, and care to be signed by the MHCRF and the resident, prepared in accordance with § 3824;
- (n) A copy of the house rules for the facility prepared in accordance with § 3823.29;
- (o) A Program Statement as described in § 3805.6;
- (p) An Emergency Preparedness Plan, Continuity of Operations Plan, and health-related emergency policies and procedures as described in § 3805.7;
- (q) A current staffing pattern on a form prescribed by the Department and signed by the Applicant;
- (r) Documentation of required medical examinations and vaccinations, criminal background check, and education, experience, and training certifications for each staff person who will be working in the facility upon licensure, as provided in § 3850; and
- (s) Proof that utility accounts are in the name of the Applicant, including water, heat, electricity, telephone, and internet service, and that payments are current where Applicant has had prior service at the facility.

3805.5 The Department in its sole discretion may accept and review a license application for a MHCRF prior to receiving documents required pursuant to §§ 3805.4(q) and (r), and may authorize the Applicant to provide the staffing pattern and documentation of staff eligibility after the Department has determined that the Applicant has satisfied the other licensure requirements set forth in §§ 3805.3 and 3805.4.

3805.6 Each Applicant shall submit a written Program Statement, on a form prescribed by the Director, which shall include a description of the following:

- (a) The MHCRF's program and facilities, including any population-specific programs;
- (b) The services provided;
- (c) The internal process for resident grievances which shall conform to the Department's grievance regulations;

- (d) The monthly rental fee for room, board, and care, and any fees or charges not included in the monthly rental fee;
- (e) The payment and refund policies;
- (f) The group or groups of persons to be served, including any gender, age, health, or language characteristics, and the justification for any limitations described;
- (g) Admission and discharge criteria;
- (h) Transition planning provided to residents to assist in moving to a lower level of care; and
- (i) A description of any services provided by independent contractors.

3805.7 The Application shall also include a copy of:

- (a) The Emergency Preparedness Plan required by § 3833 and FEMSD;
- (b) A Continuity of Operations Plan (COOP), to include a description of equipment, appliances, special supplies, and procedures that the MHCRF has in place to address extended power outages, heat emergencies, natural disasters, or other situations not addressed in the FEMSD approved plan. The MHCRF shall review and update, as necessary, the COOP annually and provide a copy to the Department at the time of licensure renewal and upon request. The COOP shall include provisions and emergency supplies for the MHCRF to remain in operation during the emergency, as well as procedures for emergency evacuation and temporary relocation of residents; and
- (c) Written policies and procedures governing the care of residents in health-related emergencies, including a communicable disease episode, food poisoning outbreak, critical illness or death of a resident, or a change in the mental status of a resident that endangers himself, herself, or others.

3805.8 The Director will review each application for a MHCRF license for completeness and submission of the required documents and fee. The Director may request additional information in order to evaluate the applicant's eligibility for a license.

3805.9 The Director may terminate review of an application that is incomplete, is not accompanied by the required fee, or is not accompanied by all required documents. The Director shall provide the Applicant with written notice stating why review has been terminated.

- 3805.10 The Director shall conduct background checks on the Applicant, which may include the officers, directors, or partners of a corporation, agency, partnership, or employees to determine the Applicant's suitability or capability to operate a MHCRF. Background checks may include:
- (a) Verification of professional or occupational licensure status (if applicable);
  - (b) Verification of training, educational credentials, and certifications;
  - (c) Contacts with District and other state or federal officials to determine the existence and content of outstanding warrants, complaints, criminal convictions, debts to District government, and records of civil actions or judgments; and
  - (d) Review of the record of regulatory compliance for other businesses owned or operated by the Applicant that provide residences, room or board, or involve care of vulnerable persons.
- 3805.11 Notwithstanding Subsection 3825.5, the Director may approve licenses for single sex, age specific, or other specific populations, such as the hearing impaired, where the MHCRF program is necessary to meet the special needs of the population and will not unfairly limit choices for other individuals seeking a MHCRF placement.
- 3805.12 At the time of license application, or renewal application, the MHCRF shall pay any outstanding Notice of Infraction (NOI) fines.

## **3806 INSPECTION FOR INITIAL LICENSURE**

- 3806.1 Prior to initial licensure of a MHCRF, the Director shall conduct an on-site inspection to determine compliance with this chapter. The Director shall send a written Statement of Deficiencies identified as a result of the on-site inspection to the Applicant no later than ten (10) days after the inspection is completed.
- 3806.2 A MHCRF with deficiencies shall be allowed a reasonable period of time, not to exceed thirty (30) days from the date of the written Statement of Deficiencies, to correct the deficiencies while an application for initial licensure is pending. The facility may submit written proof of correction of deficiencies where appropriate.
- 3806.3 The Director shall conduct a follow-up inspection to determine correction of deficiencies within ten (10) days following the thirty (30) day correction period or within ten (10) days after notification by the Applicant that the deficiencies have been corrected.

## **3807 DENIAL OF INITIAL LICENSURE**



- 3807.1 The Director shall deny an initial MHCRF license for a new MHCRF if the MHCRF is not in compliance with this chapter, the Applicant provided false or misleading information during the application process, or the Applicant has failed to comply with the Department's plan of correction.
- 3807.2 If the Director denies an initial MHCRF license, the Director shall issue written notice to the Applicant stating the reasons for the denial. The denial shall be effective immediately.
- 3807.3 The Applicant may request a review of the denial by the Director within ten (10) days after service of the notice of denial. The request for review shall be in writing and shall state the reasons why the license should be granted. The Director shall consider and respond in writing to a request for review within ten (10) days after receipt of the request. The Director's decision in response to a request shall be final.

**3808 NINETY-DAY PROVISIONAL LICENSE FOR NEWLY LICENSED FACILITIES: ISSUANCE, RENEWAL, AND ACTION UPON EXPIRATION**

- 3808.1 All Applicants approved by the Director for a new MHCRF license shall receive a ninety (90) day provisional license.
- 3808.2 The Director shall conduct at least one (1) inspection of the facility within ninety (90) days after it begins to operate to assess whether the facility and its operations are in compliance with this chapter.
- 3808.3 The Director may, in his or her discretion, renew a provisional license once for up to an additional ninety (90) days for a MHCRF that is not in full compliance with this chapter; provided The MHCRF is taking action to correct cited deficiencies in accordance with a mutually agreed-upon timetable.
- 3808.4 The Director may issue a regular license for not to exceed one (1) year from the date the initial provisional license was issued to a MHCRF that is in full compliance with the requirements of this chapter, as determined by the Director.
- 3808.5 Upon expiration of the provisional license, including an extension under § 3808.3, the Director shall deny a regular license if the MHCRF fails to demonstrate compliance with this chapter.
- 3808.6 If the Director denies an Applicant a regular license or renewal of a provisional license pursuant to §§ 3808.3 or 3808.5, the Applicant may make a written request for reconsideration to the Director within ten (10) days after service of the notice.

- 3808.7 Upon receipt of a request for reconsideration pursuant to § 3808.6, the Director shall hold an informal hearing within the Department within fifteen (15) days to consider the request. The Director shall provide reasonable notice to the Applicant of the date and time of the informal hearing and any applicable hearing procedures.
- 3808.8 At the informal hearing, the Applicant shall have an opportunity to present written and oral statements to the Director in response to the notice of license denial.
- 3808.9 The Director shall notify the Applicant in writing of the Director's determination on the request for reconsideration within ten (10) days after the informal hearing, and shall include the reasons if the license denial is upheld.
- 3808.10 The Director's determination pursuant to § 3808.9 shall be final. In his or her discretion, the Director may extend the license for a reasonable period of time to ensure the safe discharge of residents in accordance with Section 3861.
- 3808.11 If the MHCRF has previously held a regular license for the facility, the procedures set forth in § 3815 through § 3821 shall apply to actions by the Director to non-renew, revoke, suspend, convert, or deny a license.

### **3809 RE-APPLICATION AFTER LICENSE DENIAL, NON-RENEWAL, OR REVOCATION**

- 3809.1 Except as provided in § 3809.2, an Applicant may not reapply for licensure for ninety (90) days following the Department's denial of a license.
- 3809.2 An Applicant may not reapply for licensure for three (3) years from the effective date of the Director's determination to deny renewal of or revoke the license pursuant to § 3816, or, if the Director's determination is appealed, from the date of a final decision denying renewal of or revoking the license.
- 3809.3 The Director may in his or her discretion grant a waiver of the time periods set forth in this section for good cause shown.

### **3810 GENERAL MHCRF OPERATIONAL RESPONSIBILITIES**

- 3810.1 The MHCRF shall not willfully fail or refuse to comply with a statute or regulation governing MHCRFs.
- 3810.2 The MHCRF shall cooperate with inspections by the Director or other District government officials conducted pursuant to § 3803 and shall cooperate with the Department's investigation of a complaint made against the MHCRF.
- 3810.3 The MHCRF shall immediately inform the Director of any Major Unusual Incident pursuant to § 3848, the absence of required staff, a resident's failure to

take prescribed medications for more than forty-eight (48) hours, or significant deficiencies including: a lack of heat, air conditioning, water, hot water, or electricity; bug or rodent infestation; or the need to move a resident or residents due to an emergency.

- 3810.4 The MHCRF shall inform the Director of a change in the operation, program, or services of a MHCRF of a degree or character that may affect its licensure, including a change in the Residence Director or other staff. The MHCRF shall inform the Director as soon as feasible after the MHCRF is aware that the change will occur, but no later than five (5) days after the change.
- 3810.5 The MHCRF shall promptly correct deficiencies. Serious deficiencies or conditions immediately affecting resident health and safety, such as conditions described in § 3810.3, shall be corrected within twenty-four (24) hours. For purposes of this section, the MHCRF shall report a resident's failure to take prescribed medications for more than forty-eight (48) hours to the Director and the resident's CSA within twenty-four (24) hours of such failure.
- 3810.6 If the Operator of a MHCRF receives a Statement of Deficiencies, the MHCRF shall correct the deficiencies within the time frame required by the Department in accordance with § 3811, or within such extended time as the Director may grant, for good cause shown, upon written request.
- 3810.7 The MHCRF shall submit a signed and dated Plan of Correction on a form prescribed by the Director within five (5) days after receiving the Statement of Deficiencies. The Plan of Correction shall describe the corrective actions that the MHCRF plans to take to correct the deficiencies or verify that the deficiencies have been corrected.
- 3810.8 Before a person begins working or providing volunteer or other services at the MHCRF, the MHCRF shall ensure that the person has met all prerequisites and has submitted all required documents as set forth in §§ 3850, 3851 and 3852.
- 3810.9 If the Director receives a complaint of abuse or neglect of a resident by a Residence Director or staff member, upon direction by the Director, the MHCRF shall immediately remove the Residence Director or staff member from the MHCRF until the complaint is found to be unsubstantiated.
- 3810.10 If a criminal investigation or an investigation by the Department of Human Services pursuant to the Adult Protective Services Act is initiated, the removal of the Residence Director or staff member shall remain in effect until the investigation is completed and the complaint is found to be unsubstantiated. During the removal period, the Residence Director or staff member shall not be employed at another MHCRF in a direct patient care capacity.

- 3810.11 Each MHCRF license in an Operator's possession shall be the property of the District government. The MHCRF shall return the license to the Director upon request after license suspension, revocation, termination, replacement, or expiration.
- 3810.12 Each MHCRF shall maintain personnel records, resident records, administrative records, and MHCRF financial records as required by §§ 3824, 3825, 3837, 3838, 3839, 3840, 3846, 3848, 3850 through 3855. All resident and personnel records shall be maintained at the MHCRF. MHCRF financial records shall be maintained at the MHCRF or at the Operator's business office in the District of Columbia and shall be made available to the Department upon request.
- 3810.13 Each MHCRF shall meet each of the specific requirements for operation of MHCRFs set forth in this chapter.
- 3810.14 In an emergency caused by a natural disaster, extreme heat or cold, extended power outage, or a similar situation, the MHCRF shall contact the Director as soon as possible. The MHCRF shall inform the Director whether the MHCRF is fully functional or, if there are problems or deficiencies that affect residents, how these problems are being addressed and if there is a need to temporarily transfer residents to another location.
- 3810.15 No MHCRF resident shall be relocated outside of the District of Columbia without the prior written approval of the Director.
- 3810.16 No MHCRF shall delay, hinder, obstruct, impede or otherwise interfere with the emergency relocation of residents.

### **3811 DEPARTMENTAL OVERSIGHT AND INVESTIGATIONS**

- 3811.1 Any person may file a complaint with the Director alleging violations of the requirements of this chapter, and the Director may conduct unannounced investigations and inspections to determine the validity of the complaint.
- 3811.2 The Director shall conduct licensure inspections and review records including resident records, personnel records, administrative and financial records as authorized by §§ 3803 and 3811.1, and as required by §§ 3806, 3808.2, and 3813.3. In addition, the Director shall inspect facilities:
- (a) As appropriate, when a complaint is received;
  - (b) In accordance with any schedule adopted by the Department; and
  - (c) When the Director, in his discretion, determines that an inspection is needed or appropriate.

- 3811.3 The Director shall require an Operator to correct any condition that violates this chapter within fourteen (14) days after the date the Operator is notified of the violation, except where the seriousness of the condition and its impact on residents requires a shorter time period, including the conditions provided in § 3811.4. The Director, in his or her discretion, may grant a reasonable extension of time for compliance, upon written request by the MHCRF, for good cause shown.
- 3811.4 The Director may require an Operator to immediately correct an emergency condition affecting resident health and safety within a time specified by the Director. These conditions include, but are not limited to the a lack of heat, extreme heat, lack of water, lack of hot water, lack of electricity, a stopped toilet, a broken window or door, lack of staff coverage, or a bug or rodent infestation.
- 3811.5 The Director shall issue a Statement of Deficiencies to the Operator, including the deadlines for correction of the deficiencies and for the Operator’s submission of a written Plan of Correction.
- 3811.6 The Director, in his or her discretion, may grant a reasonable extension of time for correction of the deficiencies, upon written request by the MHCRF with good cause shown.
- 3811.7 Nothing in this section or § 3810 shall require the Director to issue a Statement of Deficiencies or allow the MHCRF an opportunity to abate a deficiency, prior to issuing a Notice of Infraction for violations of this chapter.
- 3811.8 NOIs shall be issued upon observation of violations of this chapter, especially when they are recurrent, endanger resident or staff health or safety, or when there is a failure to comply with core requirements of operating a MHCRF.
- 3811.9 If, after an investigation or inspection, the Director finds failure to meet or maintain the standards required by this chapter or violations of this chapter the Director may take appropriate action to deny renewal of, suspend, revoke or convert a license in accordance with the provisions of §§ 3814, 3815 or 3816.
- 3811.10 In addition to, or in lieu of, issuing a notice to deny renewal, suspend, revoke or convert a license, the Director may pursue any other available enforcement option, including those authorized by Section 10 of the Licensure Act (D.C. Official Code § 44-509) and the Civil Infractions Act.

## **3812 APPROVAL OF VARIANCES**

- 3812.1 The Director may grant a variance from any of the requirements of this chapter, if the Applicant or Licensee can show undue hardship and the variance:
- (a) Is consistent with the provisions of the Licensure Act;

- (b) Will not endanger the health or safety of residents or the public; and
- (c) Would not permit a violation of other laws of the District.

3812.2 An Operator seeking a variance pursuant to § 3812.1 shall submit a written request to the Director including the following:

- (a) The regulatory requirement(s) from which a variance is being requested;
- (b) Specific reasons why the MHCRF cannot meet the requirement(s); and
- (c) Any alternative measures provided to ensure quality care and services consistent with this chapter.

3812.3 The Director may also grant a variance, in writing, to protect the health and safety of residents when an emergency caused by a natural disaster, extreme heat or cold, an extended power outage, or similar situation requires the temporary relocation of residents to another location, the need to temporarily exceed licensed occupancy limits, or other action.

3812.4 An Operator seeking a variance pursuant to § 3812.3 shall submit a written request to the Director, with a copy to the District of Columbia Long-Term Care Ombudsman, stating:

- (a) Why the variance is needed and the anticipated length of time for the variance; and
- (b) The action that the Operator proposes to take to address the issue, including:
  - (1) The number of residents to be transferred;
  - (2) The address of any temporary transfer location, the identity of its owner, the location's number of bedrooms, its bathroom and kitchen facilities, the total number of its residents after the transfer, and the accommodations to be made for the transferred residents; and
  - (3) The continuity of care plan for each resident to ensure they continue to receive services without interruption.

3812.5 The Department shall grant a variance only to the extent necessary to ameliorate an undue hardship or emergency and only when compensating factors are present that give adequate protection to residents and the public health and safety consistent with applicable law.

3812.6 If the Director determines that the conditions in § 3812.1 or § 3812.3 are not met, the Director shall issue a written denial to the Operator stating the basis for denial. The decision of the Director shall be final.

3812.7 The Department shall maintain a record of all variances granted. The record shall contain a complete written explanation of the basis for each variance and shall be open to inspection by the public.

### **3813 RENEWAL OF LICENSE**

3813.1 An Operator shall submit an application for license renewal to the Director, together with the fee required by § 3802, no later than ninety (90) days before the expiration date of the current license. The application shall meet the requirements of § 3805, except that supporting documents shall be submitted with the application in accordance with this section:

- (a) Letters of reference required by § 3805.4(a), if there is a change in Residence Director;
- (b) Documentation of required medical examinations, annual physician certifications, vaccinations, education, experience, and training certifications as provided in §§ 3805.4(b) and (r) for any new Residence Director or new staff, and updated information as required in § 3850 for the current Operator, Residence Director, or staff;
- (c) An original current Certificate of Good Standing for a corporation;
- (d) Verification of the required insurance coverage from a company or broker providing insurance, including dates and specific coverage provided;
- (e) Verification of compliance with criminal background check requirements in accordance with § 3805.4(f) and §§ 3850.10 through 3850.14 for any new hires and for any “unlicensed person” currently working at the facility or having unsupervised access to the facility and residents;
- (f) New Certificate of Occupancy as required by § 3805.4(g) for a MHCRF housing more than six (6) residents, if there is an increase in occupancy;
- (g) FEMSD Fire Inspection Approval, if not current;
- (h) If requested by the Director after a DBH inspection of the premises, a satisfactory pre-licensure renewal inspection by DCRA, and copies of any permits for work being done on the premises, as provided in § 3805.4(h) and (i);
- (i) Clean Hands Certification;

- (j) A statement from the Office of Tax and Revenue that the Applicant does not owe taxes in excess of one hundred dollars (\$100.00) or has entered into an approved payment plan;
- (k) A copy of a current lease agreement if the premises are not owned by the Applicant; and
- (l) If there have been any changes in these documents since the facility's initial licensure or last renewal, the current standard residency contract, house rules, Program Statement, Emergency Preparedness Plan, COOP, or health emergency procedures for the facility as provided in § 3805.4(m) through (p);
- (m) A current staffing pattern on a form prescribed by the Department and signed by the Applicant;
- (n) Proof that utility bill payments are current for water, heat, electricity, phone, and internet service; and
- (o) Current resident roster.

3813.2 If the Operator fails to timely submit a license renewal application, the MHCRF license will terminate at the end of the original license period.

3813.3 The Director shall conduct an on-site inspection of the MHCRF to determine compliance with this chapter prior to the expiration of the license. Unless notified otherwise, inspections shall be unannounced.

3813.4 The Director shall send a written Statement of Deficiencies, if any, from the on-site inspection to the Operator no later than ten (10) days after the inspection is completed.

3813.5 The MHCRF shall submit a Plan of Correction and correct the deficiencies within the time frame required by the Director pursuant to §§ 3811.3, 3811.4, and 3811.5.

3813.6 The Director shall conduct a follow-up inspection to determine correction of the deficiencies within ten (10) days after the correction deadline or within ten (10) days after notification by the MHCRF that the deficiencies have been corrected.

**3814 DETERMINATION ON APPLICATION FOR RENEWAL OF MHCRF LICENSE**



- 3814.1 The Director may issue a regular renewal license for a period not to exceed one (1) year to the Operator of a MHCRF that is in full compliance with this chapter and has no deficiencies.
- 3814.2 The Director may issue a regular renewal license for a period not to exceed one (1) year to an Operator of a MHCRF with minor deficiencies that can be corrected within thirty (30) days, or such other time period as the Director may require, and that is in substantial compliance with this chapter.
- 3814.3 The Director may issue a provisional license not to exceed ninety (90) days to the Operator of a MHCRF that is not in full compliance with this chapter provided that the MHCRF;
- (a) Is taking action to correct cited deficiencies;
  - (b) Is taking appropriate ameliorative action in accordance with the Department-approved timetable. A provisional license may not be renewed more than once.
- 3814.4 The Director may issue a restricted license not to exceed ninety (90) days, pursuant to § 3815, when the MHCRF has numerous deficiencies or a single serious deficiency and the MHCRF has failed to correct the violation(s) or is not taking appropriate ameliorative actions to correct the violation(s).
- 3814.5 The restricted license or accompanying notice shall specify the restriction or restrictions, which may include a prohibition against the facility accepting new residents or against delivering services that it would otherwise be authorized to deliver.
- 3814.6 At the end of the restricted license time period, the license for the facility shall terminate if the deficiencies remain unabated.
- 3814.7 The Director may deny an application for renewal of a MHCRF license for any of the reasons set forth in § 3816.1.

## **3815 SUMMARY SUSPENSION AND LICENSURE CONVERSION HEARINGS**

- 3815.1 The Director may, prior to a hearing:
- (a) Suspend the license of an MHCRF if the Director determines that existing deficiencies constitute an immediate or serious and continuing danger to the health, safety, or welfare of its residents;
  - (b) Convert an MHCRF's license to a provisional license if the facility has outstanding deficiencies, as set forth in § 3814.3, but is taking appropriate ameliorative actions; or

(c) Convert its license to a restricted license as set forth in § 3814.4.

3815.2 Upon summary suspension or conversion of a license pursuant to § 3815.1, the Director shall give the MHCRF written notice of the suspension or conversion.

3815.3 The written notice of the suspension or conversion shall include a copy of the order of suspension or conversion, a statement of the grounds for the action, and notification that the MHCRF may, within seven (7) business days after receipt of the written notice, file with the Director a written request for an expedited preliminary review hearing with respect to the action. The hearing shall be held before OAH or a Hearing Officer as provided in §§ 3818.1 and 3818.2.

3815.4 If the MHCRF fails to timely request an expedited preliminary review hearing, the suspension or conversion shall remain in effect until terminated by the Director, or until a non-expedited hearing is requested and held pursuant to § 3818.

3815.5 If the MHCRF makes a timely request for an expedited preliminary review hearing, a hearing shall be convened within three (3) business days following receipt of the request.

3815.6 A request for a hearing, pursuant to § 3815.5, shall not stay the suspension or conversion order.

3815.7 At a preliminary review hearing, the Department shall have the burden of establishing a *prima facie* case of failure to meet or maintain the standards required by this chapter.

3815.8 At the conclusion of the hearing, the suspension or conversion order shall be either affirmed or vacated by the Administrative Law Judge (ALJ) or a Hearing Officer appointed by the Director. If affirmed, it shall remain in effect for no longer than thirty (30) days unless extended pursuant to § 3815.9. During this period, a final hearing shall be scheduled to consider the appropriateness of revocation or continuing restrictions on licensure.

3815.9 Before expiration of a suspension or conversion order, the ALJ or Hearing Officer may grant an extension for an additional thirty (30) days upon agreement of all the parties or upon good cause shown.

3815.10 Section 3818 pertaining to Conduct of Hearings shall apply to preliminary review and final hearings on summary suspensions and conversions, except that the ALJ or Hearing Officer may limit the evidence presented at expedited preliminary review hearings in accordance with the nature of the proceeding.

**3816 LICENSE SUSPENSION, LICENSE REVOCATION, AND DENIAL OF RENEWAL LICENSE**

3816.1 The Director may suspend, revoke, or deny renewal of the license of a facility issued pursuant to this chapter for any of the following reasons:

- (a) Violation of the Licensure Act or any other applicable provision of District of Columbia or federal law, including violation of the Criminal Background Check Act, the Nursing Home and Community Residence Facility Residents Protection Act, and the Clean Hands Act;
- (b) The Operator, its governing body, chief executive officer, administrator, or Residence Director has made a material misrepresentation of fact to a government official with respect to the MHCRF's compliance with any provision of the Licensure Act, this chapter, or other provision of District of Columbia or federal law;
- (c) Failure to meet or maintain the standards required by this chapter;
- (d) Submission of false or misleading information to the District in connection with an application for licensure or related to licensing procedures;
- (e) Failure or refusal to allow inspections pursuant to this chapter;
- (f) Failure or refusal to submit information requested by the Department;
- (g) Failure or refusal to obey any lawful order of the Director issued pursuant to this chapter;
- (h) Conviction of the Operator, its governing body, administrator, Residence Director, the Chief Executive Officer, or other key staff member of a felony involving the management or operation of a MHCRF, or that is directly related to the integrity of the MHCRF or the public health or safety; and
- (i) Any act or failure to act, which constitutes a threat to the health or safety of residents, MHCRF staff, or the public;

3816.2 Except as provided in § 3808 with respect to new provisionally licensed MHCRFs, and except for a summary suspension undertaken pursuant § 3815, every holder of a license shall be afforded notice and an opportunity for a hearing pursuant to § 3818 prior to an action of the Director to suspend, revoke, or deny renewal of a license.

3816.3 When the Director plans to suspend, revoke, or deny renewal of a license under this section, the Director shall give the Operator a written notice that includes the following:

- (a) That the Director shall take the proposed action unless the Operator files a written request for a hearing, within fifteen (15) days of the receipt of the notice, with the Director and the administrative hearing body identified by the Director as described in § 3818. In lieu of requesting a hearing, the Operator may submit documentary evidence to the Director for the Department's consideration before the Department takes final action;
- (b) The Director's reasons for the proposed action;
- (c) A statement that if the Operator does not respond to the notice within fifteen (15) days, the proposed action is final and the Director may take the action proposed in the notice, without a hearing, and shall inform the Owner in writing of the action taken;
- (d) A statement that if the Operator chooses to submit documentary evidence but does not request a hearing, the Director shall consider the material submitted and shall decide, without a hearing, whether to take the proposed action. The Director shall notify the MHCRF in writing of the action taken.

3816.4 An Operator that fails to file a written request for a hearing within fifteen (15) days of the receipt of the notice waives the right to contest or appeal the notice.

**3817 SERVICE OF NOTICE**

3817.1 Any formal notice issued by the Director, including any notice or order to deny, suspend, convert, deny renewal of or to revoke a license, and any notice of appeal rights or notice of a hearing shall be served:

- (a) By personal service; or
- (b) Electronic mail.

3817.2 If notice is served personally, it shall be effective when delivery is made personally to the MHCRF or its authorized agent.

3817.3 Each MHCRF granted a license shall provide a valid electronic mail address and consent to receive official correspondence, including licensing notices and infractions, at the electronic mail address.

3817.4 A MHCRF that fails to respond to or appeal any notice within the allotted time waives any right to appeal or contest the notice. If a MHCRF that has been served does not appear for a scheduled hearing and no continuance has been granted, the Administrative Law Judge or Hearing Officer may proceed to hear evidence, consider the matter, and render a decision on the basis of the evidence available.

**3818 CONDUCT OF HEARINGS**

3818.1 Hearings required by § 3815 and § 3816 shall be conducted in the manner required for contested cases pursuant to the District of Columbia Administrative Procedure Act, and shall be open to the public.

3818.2 Hearings shall be held before an ALJ of the OAH, provided the Director maintains an arrangement with OAH to adjudicate the Department's licensure and appeals cases. Hearings before OAH shall be held in conformity with OAH Rules of Practice and Procedure.

3818.3 If Department cases are not heard by OAH as provided in § 3818.2, the Director shall appoint a Hearing Officer to conduct hearings required by § 3815 and § 3816.

**3819 [RESERVED]**

**3820 [RESERVED]**

**3821 [RESERVED]**

**3822 INSURANCE**

3822.1 Each MHCRF shall carry the following types of insurance in at least the following amounts:

- (a) Hazards (fire and extended coverage) or resident personal effects coverage in the amount of at least five hundred dollars (\$500) per resident to protect resident belongings, with aggregate coverage of at least \$500 multiplied by the number of residents;
- (b) A commercial policy for general liability and professional liability for at least:
  - (1) Three hundred thousand dollars (\$300,000) per occurrence with a six hundred thousand dollar (\$600,000) aggregate for one (1) to eight (8) beds; or
  - (2) Five hundred thousand dollars (\$500,000) per occurrence with a one million dollar (\$1,000,000) aggregate for nine (9) or more beds; and
- (c) Sexual abuse or molestation coverage to protect MHCRF residents from abuse or molestation by staff, for a limit of at least one hundred thousand dollars (\$100,000) per occurrence.

- 3822.2 The insurance required by § 3822.1 shall be issued on an “occurrence” or “claims made” basis. If a “claims made” basis is used, the effective date shall be retroactive to the expiration date of the previous policy or the issuance date of the license.
- 3822.3 The MHCRF may substitute another form of policy that meets the minimum policy limits and the types of coverage required by § 3822.1, provided that the Operator can demonstrate through the Insurance Certificate, any policy endorsements, and any other documentation required by the Director that the policy will cover claims made against the MHCRF.
- 3822.4 Before the Director issues or renews a license, the MHCRF shall submit to the Director a certification of insurance issued by the insurance carrier verifying the policy coverage, dates of coverage, and policy limits. Where the MHCRF has been previously insured, the insurance certification shall be issued on or before the expiration date of the previous insurance policy.
- 3822.5 The Operator shall direct the insurance carrier to notify the Director if the policy is not renewed or is cancelled, and the Director may require proof that this direction has been given.
- 3822.6 The insurance shall be issued by an insurance carrier licensed to provide insurance in the District of Columbia, or through a surplus lines producer licensed in the District of Columbia.
- 3822.7 The insurance required by this section shall be maintained in force at all times that the MHCRF is licensed.

### **3823 RESIDENT’S RIGHTS AND RESPONSIBILITIES**

- 3823.1 As a community-based residential facility, MHCRFs shall optimize resident initiative, autonomy, and independence in making individual life choices, including but not limited to daily activities, physical environment, and personal interactions. Each resident has a right to select among placement options that are identified and documented in the person-centered treatment plan based upon the individual’s needs, preferences, and the resources available for room and board. Each MHCRF shall comply with the Consumers’ Rights Act, including affording residents the consumer rights set forth in Section 204 (D.C. Official Code § 7-1231.04).
- 3823.2 Prior to the admission of each prospective resident, the MHCRF shall explain to the prospective resident and to the prospective resident’s representative, if any, the prospective resident’s rights and responsibilities, including the additional rights and responsibilities stated in the Consumers’ Rights Act and this section. In combination with the resident’s rights statement required in § 3823.3 below or separately, the MHCRF shall enter into a written agreement with the resident that

explains the terms of occupancy including the monthly fee or rent, the discharge or transfer process, and resident appeals.

- 3823.3 The MHCRF shall provide to the resident, and to the resident's representative, if any, a written statement of the resident's rights and responsibilities which shall be signed by the resident and resident's representative. The MHCRF shall maintain a copy of the signed statement in the resident's record.
- 3823.4 A copy of the resident's rights statement shall also be posted in a visible location in a common area of the facility where residents congregate, and individual copies shall be available to residents upon request.
- 3823.5 If a resident cannot read or understand English, the Operator, Residence Director, or responsible staff person shall arrange for the notice to be given orally and in writing in a language the resident can understand. The Director or the Core Services Agency shall provide assistance as needed.
- 3823.6 Each resident, or resident's representative acting on the resident's behalf, shall be permitted to register grievances or complaints without the threat of the resident's discharge or other reprisal by the Operator or MHCRF staff.
- 3823.7 Each MHCRF shall provide each resident at the time of admission with a copy of any grievance or complaint procedures. These procedures shall comply with Section 212 of the Consumers' Rights Act (D.C. Official Code § 7-1231.12) and 22-A DCMR, Chapter 3.
- 3823.8 Each resident shall have the right to privacy in the provision of personal and medical care and in sleeping units.
- 3823.9 Each resident shall have the right to actively participate in the development of the resident's Individual Recovery Plan.
- 3823.10 Each resident shall have the right to receive adequate and humane treatment by competent qualified staff and to be free from physical, emotional, sexual, or financial abuse, neglect, harassment, coercion, restraint and exploitation.
- 3823.11 Each resident shall have the right to have his or her medical and treatment records and all the information they contain kept confidential in accordance with the Mental Health Information Act and any other District or federal law that governs medical or treatment records.
- 3823.12 Each resident shall have the right to review copies of all treatment plans and all other medical, financial, and administrative records pertaining to the resident that the MHCRF maintains.

- 3823.13 Each resident shall have the right to free communication with and reasonable visitation by individuals of his or her choosing, including but not limited to a personal physician, attorney, clergy, family members, friends, significant other, personal representative, and guardian.
- 3823.14 Each resident shall have reasonable opportunities for social interaction with members of either sex, unless such interaction is specifically limited or withheld under the resident's Individual Recovery Plan in accordance with Section 204 of the Consumers' Rights Act (D.C. Official Code § 7-1231.04).
- 3823.15 Each resident shall have the right to send and receive sealed mail in conformity with Section 204 of the Consumers' Rights Act (D.C. Official Code § 7-1231.04).
- 3823.16 Each resident shall have the right to communicate freely and confidentially with the resident's attorney, the courts, representatives of the District of Columbia Government, the D.C. Long-Term Care Ombudsman, and University Legal Services or any other organization currently responsible for advocacy under the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. §§ 10801 *et seq.*, in the District of Columbia.
- 3823.17 Each resident shall have reasonable access to a telephone to make and receive confidential calls.
- 3823.18 Each resident shall have the right to accept or refuse life sustaining medical treatment and to execute advanced directives about medical treatment decisions.
- 3823.19 Each resident shall have the right to refuse psychiatric treatment, including psychotropic medication, and supportive services, subject to applicable federal or District law, court order, or Department rules governing the involuntary administration of medication.
- 3823.20 Representatives of the District of Columbia government, the agency responsible for the protection and advocacy system for persons with mental illness, and the LTCO, upon presentation of proper identification, shall have immediate access to residents in MHCRFs.
- 3823.21 No resident shall have any religious belief or practice imposed upon him or her.
- 3823.22 Each resident shall have the right to participate in social, religious, or community activities that do not interfere with the rights of other residents or cause a substantial disruption to the normal functioning of the residence.
- 3823.23 Representatives of the Office of the District of Columbia LTCO Program shall have access to residents in MHCRFs in accordance with the District of Columbia Long-Term Care Ombudsman Act.



- 3823.24 Representatives of the agency responsible for the protection and advocacy system for persons with mental illness shall have access to residents in MHCRFs in accordance with the Protection and Advocacy for Mentally Ill Individuals Act.
- 3823.25 Each resident shall have the right to manage his or her own financial affairs unless the resident has a court-appointed legal guardian or conservator or a duly appointed representative payee.
- 3823.26 A MHCRF shall not:
- (a) Solicit or refer residents to be used as research subjects;
  - (b) Use residents as research subjects; or
  - (c) Receive any money, commission, gift or other thing of value in exchange for soliciting, referring or using residents as research subjects.
- 3823.27 Other than routine household duties, no resident shall be required to perform unpaid work.
- 3823.28 Except as provided in Title 21, Chapter 5 of the District of Columbia Official Code pertaining to hospitalization of the mentally ill, each transfer, discharge or relocation of a resident within a MHCRF shall comply with Title III of the Nursing Home and Community Residence Facility Residents' Protection Act of 1985 (D.C. Official Code, §§ 44-1003.01 to 44-1003.13) and Section 3861.
- 3823.29 Upon admission, each resident shall be provided a copy of the MHCRF's house rules and Program Statement.
- 3823.30 Each MHCRF shall have house rules that are consistent with this chapter and with Model House Rules provided to Operators by the Director. Each MHCRF shall encourage resident input and participation in the development and implementation of house rules. At a minimum, the rules shall address:
- (a) The use of tobacco and alcohol;
  - (b) The prohibition of the use and possession of marijuana while on the MHCRF premises;
  - (c) The use of the telephone;
  - (d) Hours for viewing or listening to television, radio, CDs, DVDs, or other media;
  - (e) Movement of residents in and out of the facility;

- (f) The prohibition against sexual relations between staff and residents; and
- (g) A prohibition against children and youth under 18 residing in the MHCRF or visiting overnight at the MHCRF.

3823.31 The resident shall comply with the MHCRF's rules during his or her residency at the MHCRF, except where a rule violates other provisions of this chapter or District of Columbia law.

3823.32 Each resident shall pay the MHCRF on a monthly basis the amount that has been agreed upon in writing for the care provided to the resident as provided in § 3824.

3823.33 Each MHCRF shall assist the resident in registering and exercising the resident's right to vote.

3823.34 Each MHCRF shall, at all times, treat residents with consideration and respect for the resident's dignity, autonomy, and privacy. Respectful treatment shall also be extended to the resident's family members, personal representative, attorney-in-fact, and guardian.

**3824 RESIDENCY CONTRACT BETWEEN MHCRF AND RESIDENT FOR ROOM, BOARD, AND CARE**

3824.1 Prior to admission, the MHCRF shall give the resident and the resident's representative, if any, a written residency contract for room, board, and care which shall be signed by the Operator or authorized Residence Director and by the resident. An individual holding an appropriate power of attorney or a court-appointed legal guardian or conservator with authority to handle the resident's financial affairs may sign on behalf of the resident as necessary.

3824.2 The residency contract shall set forth, at a minimum, the following information and requirements:

- (a) The monthly fee payable by the resident;
- (b) The care and services covered by the monthly fee;
- (c) Any care and services not covered by the monthly fee and the specific charges for all non-covered services;
- (d) Protections that address eviction processes and appeals including the Operator's obligation to provide notice of relocations, transfers, and discharges in accordance with § 3861 of this chapter;
- (e) Resident obligations upon vacating the premises and upon discharge;

(f) The residents' right to reasonably furnish and decorate their rooms.

3824.3 A new residency contract for room, care, and board shall be signed by the parties each time there is a change in the monthly fee payable by the resident or a change in services provided by the MHCRF. Any change to the monthly fee payable by the resident shall comply with § 3838.

3824.4 Residency contracts for each resident shall be maintained at the MHCRF for no fewer than five (5) years from date of the resident's discharge and shall be available for inspection by the Director.

### **3825 GENERAL ELIGIBILITY AND ADMISSION REQUIREMENTS**

3825.1 A MHCRF shall admit and retain only those persons with a principal diagnosis of mental illness:

- (a) For whom the MHCRF can safely and adequately provide care; and
- (b) Who require the level of care and supervision available at the facility.

3825.2 Prior to a prospective resident's admission and in accordance with the Mental Health Information Act, each MHCRF shall obtain the following:

- (a) A medical certification completed and signed by a licensed physician, nurse practitioner, or physician assistant within ninety (90) days prior to the prospective resident's admission to the MHCRF. The certification shall:
  - (1) Verify that the prospective resident has had a physical examination within the past year;
  - (2) Identify the prospective resident's known medical conditions including any significant changes in the prospective resident's health status since the last full physical examination; and
  - (3) Include a statement that the prospective resident is free of any communicable disease, including tuberculosis, or that any communicable disease the prospective resident has does not pose a health risk to other residents or staff and is not in an acute stage;
- (b) The most recent diagnostic assessment for the prospective resident, completed not more than six (6) months prior to admission. Any significant changes since the most recent assessment, should be documented in a signed statement by a member of the treatment team;

- (c) Current doctor's orders including all currently prescribed medications (medical and psychiatric), and a list of each known allergy;
- (d) Special diet instructions, if applicable;
- (e) Current IRP completed or updated within one hundred eighty (180) days prior to admission, or in accordance with an amended time frame set forth in a duly adopted Departmental policy published on the Department's website;
- (f) For prospective residents within the Department's system of care, the Department's approved functional assessment prepared in accordance with a tool approved by DBH that defines the level of the prospective resident's housing and personal care needs and is consistent with the level of care provided at the MHCRF, including whether the prospective resident is capable of taking his or her own medication or needs assistance with medication administration;
- (g) A copy of the prospective resident's records and face sheet, as described in § 3846.2 including demographic information from the MHCRF, CRF, nursing home, or other institution where the prospective resident last resided;
- (h) At least a seven (7) day supply of all currently prescribed medications;
- (i) Identification of representative payee, legal guardian, or conservator, if applicable; and
- (j) Income verification or statement of party responsible for payment.

3825.3 When a MHCRF accepts a resident on an emergency basis, the Director may extend the time within which the MHCRF must obtain documents required by § 3825.2, except that in all cases the resident shall be tested for tuberculosis and test results shall be obtained within seven (7) days of acceptance. Current medications shall be obtained within twenty-four (24) hours.

3825.4 The MHCRF shall obtain documents from the resident's Core Services Agency or other healthcare provider and shall immediately inform the Director if a resident's CSA is not cooperating in providing the MHCRF with documents required pursuant to § 3825.2.

3825.5 A MHCRF shall comply with the Americans with Disabilities Act and the Human Rights Act in the admission, placement, and retention of residents and in the provision of services to residents. No MHCRF shall deny admission based upon the person's age, gender, race, physical or mental disability, HIV status, religion,

sexual orientation, gender identity or expression, national origin, marital status, or source of payment for the service.

3825.6 No MHCRF shall refuse to make reasonable accommodations in accordance with the Americans with Disabilities Act and the Human Rights Act necessary to admit or retain a resident who is deaf, blind, non-English speaking, non-ambulatory, or otherwise physically or mentally disabled.

3825.7 In addition to the requirements of § 3825.5, no MHCRF shall deny admission to an individual with a Department-approved level of care determination because the person:

- (a) Needs assistance with medication administration, including injections, by a licensed health care professional or Trained Medication Employee or Medication Aide certified by the D.C. Board of Nursing and those services are available to the MHCRF;
- (b) Has active substance abuse issues in addition to serious mental illness or has a history of substance abuse or has participated in a substance abuse treatment program;
- (c) Needs limited or intermittent nursing care; or
- (d) Does not currently attend or wish to attend a day program outside of the MHCRF.

3825.8 Whenever an MHCRF denies admission to a potential resident, it shall provide written reasons for the denial on the form prescribed by the Department within three (3) days to the Director, the person's treatment team, and to the person denied admission. A copy of the written reason for the denial shall be included in the MHCRF's records. The Director may order the person's admission to the MHCRF if the admission is consistent with the Department-approved level of care, the MHCRF is licensed to provide the approved level of care, and the MHCRF has a vacant bed.

3825.9 An MHCRF that receives contract funding from the Department shall comply with any additional admission requirements contained in the contract.

3825.10 No MHCRF shall limit its admissions to persons served by a particular CSA or agency. Whenever a MHCRF that receives contract funding from the Department has vacancies, it shall immediately report the vacancies to the Director so that they may be listed on the Director's current vacancy listing.

## **3826 ENVIRONMENTAL REQUIREMENTS**

- 3826.1 No MHCRF shall use a name on the exterior of the building or display any logo that distinguishes the MHCRF from any other residence in the neighborhood.
- 3826.2 The MHCRF shall properly maintain the outside and yard areas of the premises in a clean and safe condition in compliance with § 302 of the D.C. Property Maintenance Code and, if space permits, shall have a green area including plants and trees accessible to all residents.
- 3826.3 Each MHCRF shall be located in an area reasonably free from noxious odors, hazardous smoke, and fumes, away from known sources of loud and irritating noises, and where interior sounds may be maintained at reasonably comfortable levels.
- 3826.4 The interior and exterior of each MHCRF shall be maintained in a safe, clean, orderly, attractive, and sanitary condition and shall be free from accumulations of dirt, rubbish, and objectionable odors.
- 3826.5 Each MHCRF shall be equipped, furnished, and maintained to provide a functional, safe, and comfortable home-like setting.
- 3826.6 Each MHCRF shall provide at least one (1) desk or table and one (1) chair for the use of six (6) or fewer residents, and additional desks or tables and chairs to maintain a ratio of at least one (1) desk or table and chair for every six (6) residents.
- 3826.7 Each resident who is enrolled on a full or part-time basis in a course of academic or vocational study shall be provided with a work area in the MHCRF that is quiet and conducive to study.
- 3826.8 The MHCRF shall operate and maintain an effective pest control program that complies with D.C. laws and regulations for each MHCRF to keep the premises free from insects and rodents and from debris that might provide harbor for insects and rodents. Failure to maintain an effective pest control program to prevent infestation shall be deemed a serious deficiency and shall be grounds, standing alone, for taking adverse action against a MHCRF including fines, license suspension, conversion, or revocation. The MHCRF shall replace the personal property of a resident that has been compromised due to the presence of insects or rodents in the home. No MHCRF shall employ traps or pesticides on resident bedding.
- 3826.9 First aid supplies shall be maintained in a place known and readily accessible to residents and employees and shall be adequate for the number of persons living in the residence.
- 3826.10 Staff bedrooms shall be separate from resident bedrooms and all common living areas.

- 3826.11 Adequate facilities shall be provided for the collection, storage, and removal of all trash and other refuse.
- 3826.12 Each window shall be screened.
- 3826.13 Each rug or carpet in the MHCRF shall be securely fastened to the floor or shall have a non-skid pad.
- 3826.14 Each hallway, porch, stairway, stairwell, and basement shall be kept free from any obstruction at all times.
- 3826.15 Each ramp or stairway used by a resident shall be equipped with a firmly secured handrail or banister.
- 3826.16 Plants and pets may be permitted in a MHCRF at the discretion of the MHCRF and as specified in the Program Statement. All pets shall have current vaccinations. Pets shall be examined by a licensed veterinarian within sixty (60) days of admission to a MHCRF, at least once a year thereafter, or more frequently if necessary.
- 3826.17 Each MHCRF shall have a functioning doorbell or knocker.
- 3826.18 Each exterior stairway, landing, and sidewalk used by residents shall be kept free of snow and ice.
- 3826.19 The MHCRF shall be free of loose or peeling paint, and the MHCRF shall comply with all D.C. Housing Code (14 DCMR § 707) and § 304.2 of the D.C. Property Maintenance Code pertaining to lose or peeling paint and to lead-based paint.
- 3826.20 The MHCRF shall comply with all applicable environmental laws and regulations including rules governing lead-based paint, asbestos, heating oil tanks, and hazardous waste.
- 3826.21 Each MHCRF shall provide residents with access to reasonable individual storage space for private use.
- 3826.22 Each MHCRF shall have access to a functioning facsimile machine, a computer with internet access, and a functioning e-mail address for official business, care coordination, and incident reporting purposes.
- 3826.23 Each MHCRF shall be equipped with both a functioning landline and mobile telephone. The telephone numbers shall be provided to residents and the Director.
- 3826.24 Each MHCRF shall maintain emergency supplies in a secure location at the facility to include batteries, flashlights, Sterno, an extra First Aid kit, other

supplies identified in the MHCRF's COOP required by § 3805.7, and an adequate supply of bottled water and non-perishable foods as provided in § 3834.22.

3826.25 Each MHCRF shall timely pay the expenses of the MHCRF including its mortgage, rent, utilities, and tax and insurance payments and shall not otherwise fall into arrears.

### **3827 STRUCTURAL AND MAINTENANCE REQUIREMENTS**

3827.1 A MHCRF may be located in a single or multi-family dwelling.

3827.2 All MHCRF repairs and construction shall be done in a workmanlike manner and comply with local code requirements. Major repairs shall be performed by licensed and bonded professionals, unless a waiver is granted by the Director. The MHCRF shall comply with the D. C. Construction Codes, , and shall obtain all permits and approvals required by the Department of Consumer and Regulatory Affairs (DCRA) or any other District agency before engaging in construction, repair or installation activities including:

- (a) Any new construction, alteration, repair, or addition to the structure;
- (b) A change in use or occupancy, increase in load, or modification of the floor layout of the structure;
- (c) Repairing fire damage to the structure; and
- (d) Installing or repairing electrical systems or fixtures, gas-fueled appliances or equipment, refrigerating and cooling systems, and plumbing systems or fixtures.

3827.3 The Operator shall maintain the MHCRF in compliance with all applicable provisions of the D.C. Property Maintenance Code and the D.C. Housing Code, except that an Operator shall not be required to provide residents with keys to the facility pursuant to § 607.2.

3827.4 The MHCRF shall comply with all applicable accessibility requirements in the ADA.

### **3828 LIGHTING AND VENTILATION**

3828.1 Each room in a MHCRF shall have adequate lighting, and each bedroom shall have sufficient light for reading.

3828.2 Each bathroom and hallway shall contain a nightlight, and nightlights shall be offered to residents for use in their sleeping rooms.



- 3828.3 Each outside entrance shall be lighted.
- 3828.4 All habitable rooms used for living or sleeping, including the kitchen, and all bathrooms, hallways, and stairways shall meet the lighting requirements of § 402 of the D.C. Property Maintenance Code and §§ 502 through 505 of the D.C. Housing Code (14 DCMR §§ 502 – 505), except where the D.C. Housing Code requirements are superseded by the D.C. Property Maintenance Code.
- 3828.5 Every space intended for human occupancy shall be provided with adequate natural or mechanical ventilation as required by § 403 of the Property Maintenance Code.

**3829 PLUMBING AND WATER SUPPLY**

- 3829.1 Each MHCRF shall ensure that its water supply and distribution system, including all plumbing and water heating facilities, conform to applicable requirements of the D.C. Construction Codes, including the D.C. Property Maintenance Code and the D.C. Plumbing Code, the D.C. Housing Code, and the D.C. Water and Sewer Authority.
- 3829.2 Each MHCRF shall provide adequate quantities of hot and cold water to serve the number of residents and staff in the facility.
- 3829.3 The temperature of hot water at each fixture used by a resident shall be automatically controlled and shall be maintained within the range of five degrees Fahrenheit (5°F.) over or under one-hundred and twenty degrees Fahrenheit (120°F.).
- 3829.4 The water supply may also include a separate or boosted supply at higher temperatures for the kitchen and for dishwashing and laundry.
- 3829.5 Each MHCRF shall provide hot and cold running water, under pressure, to each sink, bathtub, and shower, to each area where food is prepared and where food equipment, utensils or containers are washed, and to the laundry and bathrooms.
- 3829.6 The MHCRF shall report to the Department any lack of water or disconnection of service within four (4) hours if it occurs during a business day, and within twelve (12) hours if it occurs after business hours or on the weekend.
- 3829.7 If the water to a MHCRF is disconnected or not operating, the MHCRF shall provide bottled water for drinking, which shall be maintained in a secure location at the MHCRF at all times so that a sufficient quantity of bottled water is available. If the water to a MHCRF is disconnected or not operating for more than four (4) hours, the MHCRF shall also provide water for hand-washing and flushing the toilet. The MHCRF shall coordinate an emergency transfer of

residents in the event the loss of water is expected to last more than forty-eight (48) hours.

**3830 HEAT AND AIR CONDITIONING**

3830.1 Each MHCRF shall have a heating and cooling system that meets the standards of, and is installed and maintained in compliance with this section, the D.C. Construction Codes, including the D.C. Property Maintenance Code, the D.C. Housing Code and any other applicable District laws or regulations. Where the standards in this section are more stringent than the standards in the D.C. Property Maintenance Code or the D.C. Housing Code, the standards in this section shall apply.

3830.2 The MHCRF shall supply sufficient heat from October 1 through May 31 to maintain the following temperatures for every occupied room throughout the residence including, bedrooms, living room, dining room, kitchen, and bathrooms:

- (a) A minimum of seventy degrees Fahrenheit (70°F.) between 6:30 a.m. and 11:00 p.m.; and
- (b) A minimum of sixty-eight degrees Fahrenheit (68°F.) between 11:00 p.m. and 6:30 a.m.

3830.3 Each heating system shall be thermostatically controlled.

3830.4 A MHCRF shall not supplement its heating system with portable room or space heaters, unless their use meets FEMSD standards.

3830.5 A fireplace shall not be utilized unless:

- (a) The Operator can demonstrate that the fireplace and chimney have been inspected and determined to be safe for use within the past twelve (12) months;
- (b) An annual inspection by FEMSD has not revealed any violation or deficiency in the fireplace; and
- (c) An MHCRF staff member is present in the room while it is in use.

3830.6 The MHCRF shall provide air conditioning through individual units or a central system, which shall be maintained in safe and good working condition in accordance with the D.C. Property Maintenance Code. When residents are present in the facility, the MHCRF shall provide an inside temperature no greater than seventy-eight degrees Fahrenheit (78°F) between May 15 and September 15 or whenever the outside temperature exceeds eighty-five degrees Fahrenheit (85°F).

## **3831 BEDROOMS**

- 3831.1 Each bedroom shall comply with the space and occupancy requirements for habitable rooms in the D.C. Property Maintenance Code and § 402 of the Housing Code (14 DCMR § 402), and shall require at a minimum:
- (a) If used for sleeping by only one (1) occupant, at least eighty square feet (80 sq. ft.) of habitable room area.
  - (b) If used for sleeping by two (2) or more occupants, at least fifty square feet (50 sq. ft.) of habitable room area for each occupant.
- 3831.2 No sleeping facilities shall be permitted in any room in which there is located a furnace, space heater using an open flame, domestic water heater or gas meter.
- 3831.3 Each resident shall be provided a choice of roommates in accordance with his or her level of care as articulated in the person-centered planning and treatment plan. This roommate requirement may be modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan. An employee of a MHCRF and a resident of the MHCRF shall not share a bedroom under any circumstances.
- 3831.4 Each resident shall be provided with at least the following items:
- (a) A bed, which shall not be a cot;
  - (b) A mattress that was purchased new by the MHCRF, has a manufacturer's tag or label attached to it, is in good, sanitary and intact condition without broken springs, and a new mattress cover;
  - (c) A bedside table or cabinet and an individual reading lamp with at least a seventy-five (75) watt or luminance equivalent bulb;
  - (d) Lockable storage space in a stationary cabinet, chest, or closet that provides at least one (1) cubic foot of space for each resident for valuables and personal items;
  - (e) Sufficient suitable storage space, including a dresser and closet space, for personal clothing, shoes, accessories, and other personal items; and
  - (f) A waste receptacle and clothes hamper with lid.
- 3831.5 Each bed shall be located in a room that is designed and utilized solely as a bedroom. Each bedroom shall have a door lockable by the resident, with only appropriate staff having keys to the door. This lockable door requirement may be

modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan.

3831.6 Each bed shall be placed at least three (3) feet from any other bed and from any uncovered radiator.

3831.7 Each bedroom shall have direct access to a major corridor and at least one (1) window to the outside, unless DCRA has determined that it otherwise meets the lighting and ventilation requirements for habitable rooms pursuant to the D.C. Property Maintenance Code and the D.C. Housing Code.

### **3832 BATHING AND TOILET FACILITIES**

3832.1 Each MHCRF shall provide one (1) or more bathrooms for residents that are equipped with the following fixtures that are properly installed and maintained in good working condition:

- (a) Toilet (water closet);
- (b) Sink (lavatory);
- (c) Shower or bathtub with shower, including a handheld shower; and
- (d) Grab bars in showers and bathtubs.

3832.2 Each MHCRF shall provide at least one (1) bathroom for each six (6) occupants in compliance with § 602 of the D.C. Housing Code (14 DCMR § 602), and shall comply with any subsequently adopted more stringent requirements of the D.C. Property Maintenance Code or D.C. Housing Code.

3832.3 Each MHCRF shall equip each bathroom with the following:

- (a) Toilet paper holder and adequate toilet paper;
- (b) Paper towel holder and adequate paper towels or clean hand towels;
- (c) Soap;
- (d) Mirror;
- (e) Adequate lighting;
- (f) Waste receptacle;
- (g) Floor mat;

- (h) Non-skid tub mat or decals; and
- (i) Shower curtain or shower door.

3832.4 In addition to complying with § 3832.1(d), each MHCRF shall provide properly anchored grab bars or handrails near the toilet or other areas of the bathroom, if needed by any resident in the facility.

3832.5 Adequate provision shall be made to ensure each resident's privacy and safety in the bathroom.

### **3833 FIRE SAFETY**

3833.1 Each MHCRF shall comply with all applicable provisions of the D.C. Fire Code and the Fire Safety Provisions of the D.C. Property Maintenance Code (Chapter 7).

3833.2 Each MHCRF shall obtain an annual inspection of the facility by FEMSD, which shall determine the facility's compliance or non-compliance with fire safety requirements; provided that fire safety inspections for new construction or substantial renovation of a structure may be performed by DCRA in accordance with DCRA and FEMSD procedures and the requirements of the Construction Codes.

3833.3 Each MHCRF shall have a written Emergency Preparedness Plan with instructions that is approved by FEMSD. The plan shall be followed in case of fire, explosion, or any other emergency and shall be available for review in each MHCRF.

3833.4 The plan shall be updated annually, as necessary, and include the following:

- (a) Written responsibilities and specific tasks for each staff member;
- (b) A plan for training staff at least twice a year on the plan;
- (c) The procedures for reporting a fire or other emergency;
- (d) Life safety strategies and procedures for notifying, relocating, or evacuating occupants;
- (e) A site plan indicating an assembly point for occupants;
- (f) Floor plans identifying the location of:
  - (1) Exits;

- (2) Primary evacuation routes;
  - (3) Secondary evacuation routes;
  - (4) Accessible egress routes;
  - (5) Manual fire alarm pull stations;
  - (6) Fire alarm annunciators and controls; and
  - (7) Portable fire extinguishers;
- (g) A list of major fire hazards associated with normal use of the facility, including maintenance and housekeeping procedures;
  - (h) Identification and assignment of personnel responsible for maintenance of systems and equipment installed in the facility to prevent or control fires;
  - (i) The signature of the Operator; and
  - (j) The signature of the FEMSD official approving the plan.

3833.5 Drills testing the effectiveness of the fire plan shall be conducted:

- (a) For each resident individually upon admission;
- (b) For current residents within two (2) weeks of the effective date of a new or revised plan; and
- (c) At least quarterly, with at least one (1) drill per shift, in accordance with the D.C. Fire Code, as referenced in § 3833.1.

3833.6 Each MHCRF shall maintain in its records the most recent fire inspection report with the date of the latest inspection of the alarm system.

3833.7 Each MHCRF shall install and maintain smoke detectors in accordance with the requirements of the D.C. Fire Code, as referenced in § 3833.1, for smoke detection devices in residential facilities, and any additional requirements of the Smoke Detector Act of 1978, effective June 20, 1978 (D.C. Law 2-81; D.C. Official Code §§ 6-751.01 *et seq.*) as determined by DCRA or FEMSD

3833.8 Smoke detectors shall be installed to provide protection:

- (a) In each room used for sleeping; or
- (b) In each corridor outside of or adjacent to a room used for sleeping; and

- (c) On each story within the facility.
- 3833.9 The MHCRF shall install and maintain a smoke detector system composed of interconnected smoke detectors, as required by DCRA and FEMSD pursuant to the requirements of the D.C. Fire Code.
- 3833.10 No MHCRF shall permit smoking in bedrooms.
- 3833.11 A fire extinguisher with a minimum rating of 210 (BC) that is effective in extinguishing grease and oil fires shall be located within fifteen feet (15 ft.) of any stove, oven, cooking burner, or other cooking device.
- 3833.12 Each MHCRF shall have at least one (1) working fire extinguisher with a minimum rating of 210 (BC) on each floor, including the basement and first floor, in a central location accessible to residents and employees.
- 3833.13 A fire extinguisher with a minimum rating of 210 (BC) of a type and capacity sufficient to extinguish fires originating in the main heating plant and hot water heater shall be located within five feet (5 ft.) of this equipment.
- 3833.14 Each fire extinguisher shall be:
- (a) Properly maintained;
  - (b) Approved for its specific use by an official of the FEMSD; and
  - (c) Inspected by FEMSD annually and in accordance with the International Fire and Construction Codes cited in § 3833.1.
- 3833.15 Each fire extinguisher shall be recharged immediately after use and properly tagged.
- 3833.16 Each fire extinguisher shall have attached to it a tag giving the date when the service was performed, a description of the service performed, and the name and address of the person performing the service.
- 3833.17 Each MHCRF shall have a fire exit that is:
- (a) Clearly designated on the MHCRF's emergency preparedness plan;
  - (b) Clearly identified for residents;
  - (c) Kept clear of obstructions; and
  - (d) Accessible from sleeping rooms.

- 3833.18 If the area or floor served by a fire exit door is to be occupied, the door shall not require a key to unlock the door from the inside and shall not require more than thirty (30) seconds to unlock.
- 3833.19 Each MHCRF that has residents in sleeping rooms above the second floor, or that has more than eight (8) residents in sleeping rooms above the street level, shall:
- (a) Provide access to two (2) separate means of exit for sleeping rooms above street level, at least one (1) of which shall consist of an enclosed interior stair, a horizontal exit, or a fire escape, all arranged to provide a safe path of travel to the outside of the building without traversing any corridor or space exposed to an unprotected vertical opening; or
  - (b) Otherwise comply with D.C. Fire Code.

**3834 DIETARY SERVICES**

- 3834.1 Each MHCRF shall apply generally accepted principles of nutrition and food management to menu planning, food preparation and handling, kitchen maintenance, and service for residents of the facility.
- 3834.2 Each MHCRF shall have at least one (1) staff member who has obtained a Food Protection Manager (FPM) or Food Safety Manager (FSM) certification from an accredited national test service approved by the D.C. Department of Health. That staff member shall maintain a current certification in accordance with § 203 of the D.C. Food Code (25-A DCMR § 203).
- 3834.3 In addition to the requirements of § 3834.2, the MHCRF shall ensure that whenever food is being handled or served for human consumption, at least one (1) staff member is present who has a current FPM or FSM certification. That staff member shall ensure the proper preparation, handling, and service of food.
- 3834.4 The MHCRF shall require each certified FPM or FSM to supervise and train any staff members who are not certified as FPMs or FSMs in the storage, handling, and serving of food, and the cleaning and care of equipment used in food preparation in order to maintain sanitary conditions at all times. The kitchen, dining, and food storage areas shall be kept clean, orderly, and protected from contamination.
- 3834.5 Each individual engaged in food preparation, handling, or serving, shall wash their hands and exposed portions of arms frequently, and cover their hair with a net or other head covering.
- 3834.6 The MHCRF shall ensure that no person is involved in food preparation or service who shows signs or symptoms of a contagious illness, has exposed skin lesions, or



is otherwise prohibited or restricted from performing these functions pursuant to §§ 303(a) – (e) and 300.4 – 307.10 of the D.C. Food Code (25-A DCMR § 303(a) – (e) and 300.4 - 307.10.

- 3834.7 The MHCRF shall provide at least three (3) meals per day that:
- (a) Provide a nourishing, well-balanced and varied diet in accordance with dietary guidelines established by the United States Department of Agriculture;
  - (b) Are suited to the special needs of each resident; and
  - (c) Are adjusted for seasonal changes, and regularly include seasonal fresh fruits and vegetables.
- 3834.8 The MHCRF shall prepare and post menus on a weekly basis for the residents' review. Menus shall:
- (a) Provide for a variety of foods and beverages at each meal taking into consideration the residents' personal and cultural preferences;
  - (b) Be varied from week to week;
  - (c) Include special diets; and
  - (d) Reflect meals as planned and as actually served, including hand-written notations in pen of any substitutions made.
- 3834.9 The MHCRF shall retain a copy of each weekly menu and receipts and invoices for food purchases for six (6) months, which shall be subject to review by the Department.
- 3834.10 Each meal shall be scheduled so that the maximum interval between each meal is no more than six (6) hours, with no more than fourteen (14) hours between a substantial evening meal and breakfast the following day.
- 3834.11 In between designated meal times, residents shall have access to food. This requirement may be modified if supported by a medically assessed need and justified in the person-centered service plan. If a resident misses a scheduled meal, appropriate food substitutions of comparable nutritional value shall be offered.
- 3834.12 If the MHCRF knows or is informed in advance that a resident will be away from the MHCRF during mealtime for necessary medical care, work, a day services program, or other scheduled activities or appointments, the MHCRF shall provide the resident with an appropriate meal and in-between meal snack to carry. The

MHCRF shall ensure that the meal is nutritious and suited to the special needs of the resident as required by § 3834.7.

- 3834.13 Each food and drink item purchased, stored, prepared, or served by the facility shall be clean, wholesome, free from spoilage, prepared in a manner that is safe for human consumption, protected from contamination, and properly served in accordance with the requirements of §§ 600.1 and 700.1 of the D.C. Food Code (25-A DCMR §§ 600.1, 700.1) and this section.
- 3834.14 Each MHCRF shall have fresh water and clean drinking glasses available for each resident at all times.
- 3834.15 Each resident who needs assistance to eat or drink shall be given the assistance promptly upon receipt of meals.
- 3834.16 A MHCRF shall not permit smoking or use of tobacco products in the kitchen or in the vicinity of food preparation.
- 3834.17 Each MHCRF shall serve meals at proper temperatures. If an individual requires feeding assistance, food shall be maintained at serving temperature until assistance is provided. Food that is not promptly consumed shall be refrigerated or discarded.
- 3834.18 Food requiring refrigeration shall be promptly refrigerated after purchase and kept properly refrigerated until preparation for consumption or until consumed pursuant to §§ 1005.1 and 1005.2 of the D.C. Food Code (25-A DCMR §§ 1005.1 and 1005.2).
- 3834.19 Frozen foods shall be kept in the freezer and maintained frozen until preparation for consumption or until consumed pursuant to § 1000.1 of the D.C. Food Code (25-A DCMR § 1000.1).
- 3834.20 Food shall be protected from contamination by separating raw animal foods during storage, preparation, and holding from raw fruits and vegetables, cooked ready-to-eat foods, and other raw animal foods except when combining ingredients, as required by § 802 of the D.C. Food Code (25-A DCMR § 802).
- 3834.21 Raw animal foods, including eggs, fish, meat, poultry, and foods containing these raw animal foods shall be thoroughly cooked and heated to the temperatures required by § 900 of the D.C. Food Code (25-A DCMR § 900).
- 3834.22 Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption as required by § 806.1 of the D.C. Food Code (25-A DCMR § 806.1).

- 3834.23 The MHCRF shall ensure that the facility maintains at least a three (3) day supply of perishable food and a seven (7) day supply of bottled water and nonperishable food in a safe location, based on the menus for both regular and special diets in compliance with the MHCRF's Continuity of Operations Plan.
- 3834.24 Dry or staple food items shall be stored at least twelve (12) inches above the floor in a the kitchen or other dry room not subject to sewage or waste water back flow or contamination by condensation, leakage, rodents, or vermin. Food shall not be stored in a bathroom, garage, or mechanical room.
- 3834.25 All kitchen equipment, utensils, cookware and dishes shall be constructed of safe materials and maintained in good condition as required by § 3804.1 of the D.C. Food Code (25-A DCMR § 3804.1).
- 3834.26 All food contact surfaces, storage areas, counters, sinks and work surfaces shall be smooth, non-absorbent and easily cleanable, and shall be effectively cleaned and sanitized prior to preparation and serving of food and after each use as required by § 3804.2 of the D.C. Food Code (25-A DCMR § 3804.2).
- 3834.27 All eating utensils, pots, pans, cooking equipment, dishes, cups, glasses and other table ware shall be thoroughly cleaned and appropriately dried before use, and cleaned and properly stored after each meal to avoid contamination.
- 3834.28 Hot and cold water, soap, and towels shall be provided for hand washing in or adjacent to food preparation areas.
- 3834.29 Each MHCRF shall maintain a sufficient quantity of dishes, utensils, and cook ware to meet the needs of residents and staff.
- 3834.30 Receptacles for storage of garbage and refuse shall be waterproof and properly covered, and shall be emptied and cleaned regularly.
- 3834.31 The dining area shall have a sufficient number of tables and chairs to seat all individuals residing in the home at the same time. Dining chairs shall be sturdy, safe, without rollers unless retractable, and designed to minimize tilting.
- 3834.32 Each MHCRF shall promote each resident's participation and skill development in menu planning, shopping, food storage, and kitchen maintenance, to the extent appropriate based on the resident's IRP.

### **3835 THERAPEUTIC DIETS**

- 3835.1 Each MHCRF with a resident who has been prescribed a special or therapeutic diet shall ensure that the resident's meals are planned, prepared, and served as prescribed by the attending physician, nutritionist, or other health care practitioner.

- 3835.2 Each MHCRF with residents who have been prescribed a special or therapeutic diet or who have a condition, such as diabetes or hypertension, that commonly requires a special or therapeutic diet, shall consult with the resident's CSA or other treatment team at least annually to determine whether there are new instructions pertaining to the resident's diet.
- 3835.3 The MHCRF shall allow a visiting dietitian or nutritionist to have access to each resident's record, as authorized by the Mental Health Information Act, which shall contain the physician's prescriptions for medications and special diets. The MHCRF shall advise the visiting dietitian or nutritionist to document in the record each observation, consultation, and instruction regarding the resident's acceptance and tolerance of each prescribed diet.
- 3835.4 Each MHCRF shall ensure that all dietary prescriptions from each resident's physician, health care practitioner, dietitian, or nutritionist are maintained in the resident's medical record and are updated at least annually.
- 3835.5 Each MHCRF shall ensure that all staff responsible for food preparation and service are kept informed, in writing and verbally, of any dietary restrictions, food allergies, or other special dietary needs of each resident.

### **3836 HOUSEKEEPING AND LAUNDRY SERVICES**

- 3836.1 Each MHCRF shall be equipped with a washing machine and dryer in good condition in a safe, clean, and convenient location within the facility. The MHCRF shall provide adequate facilities and sufficient laundry detergent and other laundry supplies for residents and staff to properly wash and dry clothing and linens. No clothes or linens shall be air dried.
- 3836.2 At least three (3) washcloths, two (2) towels, two (2) sheet sets that include pillow cases, a bedspread, a new pillow, sufficient blankets, and a mattress cover shall be maintained for each resident in good and clean condition.
- 3836.3 Each piece of bed linen, towel, and washcloth shall be changed and cleaned as often as necessary to maintain cleanliness, provided that all towels and bed linen shall be changed at least once each week.
- 3836.4 Each blanket, bedspread, and mattress cover shall be cleaned regularly, whenever soiled, and before being transferred from one (1) resident to another.
- 3836.5 Each MHCRF shall ensure that the personal laundry of each resident is laundered in a sanitary manner, separate from bed linen. Laundry shall be done by the resident if the resident is capable or by MHCRF staff. The resident shall not be charged in excess of the resident's monthly residence fee for room, board, and care for detergent or other supplies, use of the washer or dryer, or staff assistance,

- 3836.6 Clean linen and clothing shall be stored in clean, dry, dust free areas that are easily accessible to residents.
- 3836.7 If it becomes necessary for residents to use a laundromat because the washing machine or dryer is temporarily out of order, the MHCRF shall pay for residents' laundry to be washed and dried.
- 3836.8 If the washing machine or dryer is out of order for more than forty-eight (48) hours, the Operator shall alert the Director, or his/her designee, of the outage.
- 3836.9 Each MHCRF shall keep a written laundry log and record the date when each resident washed and dried his or her personal laundry/clothing. At a minimum, the MHCRF shall launder residents' clothing and bedding weekly. More frequent launderings are required when necessary to prevent or eliminate hygiene or insect problems. If a resident refuses laundry services, then the MHCRF shall note the refusal on the laundry log and coordinate with the CSA to address this issue through person-centered treatment planning.

**3837 PERSONAL PROPERTY OF RESIDENTS**

- 3837.1 This section shall apply to the personal property of residents, except for personal funds which are subject to § 3838.
- 3837.2 Each MHCRF shall permit each resident to bring reasonable personal possessions, including clothing, personal articles, and furnishings to his or her living quarters in the MHCRF unless the MHCRF can demonstrate that it is not practical, feasible, or safe. Rejection of resident's personal items must be submitted to the Department for approval.
- 3837.3 Each MHCRF shall take appropriate measures to safeguard and account for personal property brought into the facility by a resident. Each MHCRF shall maintain a current inventory of each resident's personal property. The MHCRF shall update this inventory whenever new items are brought into the MHCRF and at least once annually, and shall provide a copy of the inventory, signed by the resident and staff, to the resident.
- 3837.4 The MHCRF shall provide the resident, or the resident's representative, with a receipt for any personal articles to be held by the MHCRF for safekeeping. The receipt shall include an approximate value for the article and the date it was deposited with the MHCRF. The MHCRF shall also maintain a record of all articles held for safekeeping.
- 3837.5 No MHCRF shall require a resident to give, transfer, or assign to the Operator, Residence Director, an employee or volunteer an interest in or title to any property

owned by the resident. No Operator, Residence Director, employee or volunteer of the MHCRF may accept such a gift, transfer, or assignment.

3837.6 Upon each resident's discharge, the MHCRF shall return to the resident, or the resident's representative, any personal articles held by the MHCRF for safekeeping. The MHCRF shall also ensure that the resident is permitted to take all of his or her personal possessions from the MHCRF. The MHCRF may require the resident or resident's representative to sign a statement acknowledging receipt of the property. A copy shall be placed in the resident's record.

3837.7 If a resident is not able to remove all of his or her personal property when the resident moves or is transferred or discharged from the facility, the MHCRF shall securely retain the resident's property for a minimum of ten (10) days. The ten (10) days shall be extended for an additional ten (10) days upon request of the former resident or representative.

3837.8 The MHCRF shall notify the resident's representative, the LTCO and the CSA in writing that it has the resident's property, so the resident, resident's representative or CSA can make arrangements to obtain it. The MHCRF may remove the property from the bedroom occupied by the former resident, but shall store it in a secure dry location within the facility.

### **3838 FINANCES OF RESIDENTS**

3838.1 Except as provided in § 3838.09, no MHCRF shall increase the fee for room, care, and board in a MHCRF more often than once a year, unless:

- (a) The increase is justified in writing;
- (b) The increase is caused by an unusual escalation in the expenses of the facility or the cost of services to the resident;
- (c) The resident and the Department are given sixty (60) days written notice of the effective date of the increase; and
- (d) The resident signs a new residency contract as required by § 3824, which includes the increased fee.

3838.2 Except for representative payee relationships existing prior to the effective date of this rule, no MHCRF owner, Operator, Residence Director, staff member or volunteer shall serve as a representative payee for a resident of the MHCRF. When a resident and his or her representative payee have authorized the MHCRF to handle any portion of a resident's personal funds, including rent or the personal needs allowance, the authorization shall be in writing and signed by the resident and the resident's representative payee at least annually. A resident's personal needs allowance shall be used solely for the resident's personal needs pursuant to

29 DCMR § 1450 and shall not be considered income available to pay for MHCRF costs, including rent.

3838.3 Each MHCRF shall maintain a separate and accurate record of all funds the resident or the resident's representative or representative payee deposits with the MHCRF for safekeeping in accordance with Subsection 3838.2. The record shall include the following:

- (a) A written authorization signed by the resident and the resident's representative or representative payee authorizing the MHCRF to handle the resident's personal funds;
- (b) Any instructions received from the resident's representative or representative payee and agreed to by the MHCRF pertaining to disbursement of the funds;
- (c) The date and the amount of all money received;
- (d) The date and amount of each withdrawal by the resident or disbursement by the MHCRF for the resident's benefit, including signed receipts;
- (e) The items or purposes for which disbursements were made by the MHCRF;
- (f) The current balance; and
- (g) The signature of the resident for each withdrawal and the signature of facility staff for each deposit and disbursement made on behalf of a resident.

3838.4 Each MHCRF shall make a copy of the records required in § 3824.2 and § 3838.3 available to the resident and the resident's representative or representative payee:

- (a) On at least a quarterly basis;
- (b) At least ten (10) business days before the resident is to be transferred or discharged from the facility or as soon as possible prior to the discharge; and
- (c) Upon request by the resident, the resident's representative, or representative payee.

3838.5 Upon admission of a resident, each MHCRF shall explain to the resident and the resident's representative or representative payee how the resident's personal needs allowance and any other personal funds shall be handled during his or her stay at the MHCRF. This explanation shall include the resident's right to manage the

money himself or herself, absent a court order appointing a guardian or conservator to administer the resident's financial or personal affairs.

- 3838.6 Each MHCRF shall, upon request, make resident financial records available for inspection, review, and copying by the Department, the D.C. Department of Healthcare Finance, the LTCO, and any entity authorized by the resident to review such records.
- 3838.7 Upon each resident's discharge from the MHCRF, the MHCRF shall promptly provide the resident's remaining personal funds to the resident, the resident's court-appointed representative to administer his or her financial and personal affairs, or the resident's representative payee. The MHCRF shall require the resident, court-appointed representative, or representative payee to sign a statement acknowledging receipt of the funds. A copy shall be placed in the resident's record.
- 3838.8 Upon each resident's discharge from the MHCRF, the MHCRF shall promptly send rent funds, pro-rated from the date of discharge, to the new MHCRF location.
- 3838.9 Notwithstanding § 3838.1, any increase in a resident's Social Security or State Optional Payment shall be distributed to the MHCRF for room, board and care in accordance with § 549 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.49), unless the Department of Health Care Finance has published an increase in the personal needs allowance in 29 DCMR § 1450.

### **3839 MEDICATION**

- 3839.1 When a resident is admitted, and for as long as the resident resides in the facility, the MHCRF shall maintain current doctor's orders for every medication the resident is taking, plus a list of each known allergy and each prescribed controlled substance. The MHCRF shall obtain this information from the resident's CSA, treatment team, or health care provider.
- 3839.2 The MHCRF shall keep each resident's medications secure in a locked drawer or cabinet, separate from those of other residents, and shall ensure they are not accessible to other residents or visitors. Each medication shall be properly identified and shall be maintained under proper conditions of light and temperature as indicated on the medication's label.
- 3839.3 Each medication of each resident shall be stored in its original container and shall not be transferred to another container or to another resident. Medication for external use shall be stored separately from medication for internal use.



- 3839.4 Each MHCRF shall comply with District and federal law and regulations governing the procurement, handling, storage, administering, recording, dispensing and disposal of medications and controlled substances.
- 3839.5 The Operator, Residence Director, or designated staff shall ensure that each resident who is capable of self-administering his or her medication takes his or her medication as prescribed. The staff member who supervises a resident's self-administration of medication shall properly and promptly record and initial each dose of medication taken by the resident in the resident's medication record.
- 3839.6 If a resident cannot self-administer a medication, the MHCRF shall coordinate appropriate assistance from a licensed or certified healthcare professional who is authorized to administer medication under District of Columbia law to administer the medication. The MHCRF shall ensure that the administration of the medication is recorded in the resident's medication record.
- 3839.7 Each medication error or adverse reaction to a medication shall be immediately reported to the resident's physician. If the MHCRF is unable to report to the resident's physician, the MHCRF shall report the error or adverse response to the resident's treatment team. In all cases, the MHCRF shall document the error or adverse response in the resident's record, and in cases of a severe adverse reaction shall prepare and submit a Major Unusual Incident Report to the Department pursuant to § 3848.
- 3839.8 Each resident's refusal of a medication shall be documented in his or her medication record and reported to the resident's physician or treatment team.
- 3839.9 Each MHCRF shall remove and dispose properly of expired medication and medication that is no longer in use.
- 3839.10 Each MHCRF shall closely monitor each resident's supply of medication. The MHCRF shall inform each resident's treatment team, by phone and in writing, when the resident has only seven (7) days of medication remaining to ensure that the resident always has a sufficient supply of the medication prescribed by his or her physician. If no contact is established with the CSA within forty-eight (48) hours, the MHCRF shall inform the Director, in writing, of the resident's medication supply.

## **3840 MEDICAL SERVICES**

- 3840.1 Each resident shall have the right to choose his or her own medical and dental care, and shall provide for it at his or her own expense or under relevant provisions of the Social Security Act. Alternatively, each eligible resident may seek medical or dental care from a public agency at public expense in accordance with laws and regulations governing the agency.

- 3840.2 To ensure that each resident is examined by a physician at least once a year, each MHCRF shall provide written notice to the resident and the CSA ninety (90) days in advance:
- (a) Reminding each resident that he or she must provide the results of a physical examination prior to renewal of a residency contract; and
  - (b) Advising the CSA that it is time for the resident's annual physical examination.
- 3840.3 If the physical examination report has not been received thirty (30) days prior to the renewal date of the residency contract, the MHCRF shall inform the Director in writing.
- 3840.4 The physician or other licensed healthcare professional performing the annual physical examination shall provide, at a minimum, a medical certification in accordance with § 3825.2(a), prescriptions for any medications in accordance with § 3825.2(c), and any special diet instructions in accordance with § 3825.2(d).
- 3840.5 Each resident's permanent records shall include copies of his or her medical certifications, all physicians' orders and reports, and the physicians' recommendations for the resident's care.
- 3840.6 If a resident is unable to make arrangements for his or her annual medical examination or any other medical or dental examination, the Residence Director or designee shall assist the resident in making arrangements for the examinations.
- 3840.7 Each MHCRF shall maintain in the residence a list of the names and telephone numbers of each resident's physician and CSA.
- 3840.8 If an MHCRF observes a medical condition that the resident refuses to treat, the MHCRF shall document this occurrence in the resident's file and contact the CSA to coordinate a discussion with the resident. If no contact is established with the CSA within forty-eight (48) hours, the MHCRF shall inform the Director in writing.

### **3841 RESIDENT ACTIVITIES**

- 3841.1 Each MHCRF shall encourage and arrange for suitable activities for each resident to stimulate the resident, promote his or her well-being, encourage independence, and maintain normal activity and an optimal level of functioning in coordination with the resident's CSA. These activities may include education in independent living skills such as grocery shopping, cooking, housekeeping chores, personal and household laundering, money management, and use of recreational time.

- 3841.2 Each MHCRF shall, in accordance with each resident's person-centered treatment plan, maintain normal routines and procedures, providing for sleeping periods, meal times, social and recreational activities, responsibilities, and a level of resident autonomy similar to the living patterns of independent persons in the community.
- 3841.3 Each MHCRF shall encourage each resident to engage in daytime activities, including education, socialization, psycho-social day programs, and employment, and shall take advantage of public and voluntary resources in promoting resident participation in meaningful life activities. In accordance with a person-centered treatment plan, each resident shall have the freedom and support to control his or her own schedule and activities.
- 3841.4 Each MHCRF shall have books, periodicals, games, current newspapers, radio, internet access, and a television available and accessible to residents. The MHCRF shall, to the extent possible, provide recreational and leisure activities that reflect the residents' interests.
- 3841.5 Attendance at a day program shall not be mandatory for residents in a MHCRF.

**3842 ASSISTING RESIDENTS TO RECEIVE MENTAL HEALTH SERVICES**

- 3842.1 If a resident is not already enrolled with a Department-certified Core Services Agency or other provider of mental health services, the MHCRF shall encourage and assist the resident in enrolling with a CSA or other provider of the resident's choice and shall document this assistance in the resident's files.
- 3842.2 If the MHCRF learns that a resident is no longer receiving mental health services, the MHCRF shall encourage and offer to assist the resident in obtaining these services and shall document such assistance or the resident's refusal to accept assistance in the resident's files. The MHCRF shall immediately inform the Department when a resident has declined mental health services.

**3843 SERVICE COORDINATION WITH CORE SERVICES AGENCY OR OTHER PROVIDER OF MENTAL HEALTH SERVICES AND MHCRF SERVICE COORDINATION PLAN**

- 3843.1 Each MHCRF shall maintain regular contact with the CSA's designated staff member to determine whether the resident's needs are being met and shall be available to the resident and the CSA's designated staff member to assist when issues or concerns involving the resident arise. The MHCRF shall document all contacts with the CSA in the resident's file.
- 3843.2 Each MHCRF, in conjunction with the CSA's treatment team or other mental health services provider, shall regularly monitor each resident's progress and

status at the MHCRF, which shall include planning for transition to a lower level of care.

- 3843.3 Each MHCRF shall grant access to and cooperate with CSA treatment team members and any licensed or certified health care practitioner assigned to deliver services to a resident, upon presentation of proper identification and credentials.
- 3843.4 Each MHCRF shall report to the designated CSA treatment team, or other mental health services provider, if it appears that the resident needs assistance obtaining financial services, social services, health care services, or recreational and leisure activities. The report shall be made both in writing and by phone or in person.
- 3843.5 If after contacting a resident's assigned CSA treatment team or other mental health services provider, the CSA or other provider fails to provide requested medical records, or in the opinion of the MHCRF is not providing the services that should be provided, the MHCRF shall inform the Director in writing.

**3844 INDIVIDUAL RECOVERY PLAN**

- 3844.1 Each MHCRF shall participate in the development of an Individual Recovery Plan for each resident enrolled with a CSA and shall maintain a copy of the current IRP in the resident's record.
- 3844.2 The MHCRF shall describe to the CSA treatment team, the following in writing:
- (a) The resident's functional strengths and limitations in performing activities of daily living (ADLs);
  - (b) Any medical or health conditions observed that are relevant to the services needed by the resident;
  - (c) The resident's behaviors and any changes in the resident's behaviors; and
  - (d) Planning actions or activities to prepare the resident for transition to a lower level of care.
- 3844.3 The MHCRF shall provide the information required by § 3844.2 to any other mental health, health services, or community support provider authorized by the resident.
- 3844.4 The resident shall have the right to participate in planning all phases of his or her IRP, may request participation of a family member, and shall be offered the opportunity to sign his or her IRP or indicate disagreement with particular aspects of the plan or the whole of the plan.

**3845            RESTRAINTS AND SECLUSION**

- 3845.1        No restraints or seclusion shall be used in a MHCRF.
- 3845.2        No resident shall be confined in a locked room.
- 3845.3        No resident shall be locked in or out of the facility.
- 3845.4        No resident shall be locked in or out of his or her bedroom at any time.

**3846            RESIDENT RECORDS**

- 3846.1        Each MHCRF shall maintain a permanent record on each resident in a secure location at the MHCRF for as long as the resident remains at the MHCRF, and shall retain it for at least three (3) years after the resident's discharge or death. The permanent record may be maintained at an Owner's business office in the District of Columbia after the resident's discharge or death, provided that it shall be accessible to the Department upon request.
- 3846.2        Each resident's record shall include a current face sheet which documents the following information on each resident:
  - (a)        Administrative and demographic information, including name, date of birth, sex, social security number, marital status, and last known address;
  - (b)        Medical insurance numbers, including Medicare and Medicaid, if any;
  - (c)        Date of admission and diagnoses;
  - (d)        Names, addresses, and telephones numbers of the resident's representative(s), representative payee, if any, involved family members, and next-of-kin;
  - (e)        Names, addresses and telephone numbers of the resident's current personal physician(s), dentist, and any other regular health care practitioners;
  - (f)        Names and up-to-date contact information for the resident's CSA treatment team or other mental health services, substance use disorder or community support providers, and for his or her day program provider and employer, as applicable;
  - (g)        Religious affiliation, if any, including the names and telephone numbers of the resident's minister, priest, or rabbi; and
  - (h)        Resident's allergies.

3846.3 The MHCRF shall also maintain an accessible and up-to-date record that documents:

- (a) The resident's medication as provided in § 3839;
- (b) Any special diet;
- (c) Any treatment or other procedure that is required for the safety and well-being of the resident;
- (d) Any Major Unusual Incidents directly involving the resident, reported in accordance with § 3848;
- (e) All records required by § 3825.2.

3846.4 Each resident's record shall be current with each entry legible, in ink, dated, and signed with the full name of the record keeper. Errors shall be corrected by crossing out, but shall not be erased.

3846.5 Each MHCRF shall maintain a roster of current residents and shall submit a copy of the roster to the Department when the residence is first occupied, whenever there is a change of one or more residents, and when an application for license renewal is submitted.

3846.6 Each MHCRF shall make resident records available to the Department within twenty-four (24) hours of request.

### **3847 CONFIDENTIALITY OF RECORDS**

3847.1 Each resident's record and any record maintained by the MHCRF that has information identifying a resident shall be confidential and maintained in a secure location at the MHCRF.

3847.2 Disclosure and re-disclosure of information pertaining to a resident's mental health and a resident's access to his or her own records shall be governed by the Mental Health Information Act, HIPAA, and any other District or federal law or regulation governing mental health or other health records.

3847.3 If a resident authorizes release of information to a third party, a copy of the resident's written authorization on the form prescribed by the Department shall be maintained in the resident's records and shall conform to the Mental Health Information Act and HIPAA.

### **3848 MAJOR UNUSUAL INCIDENTS AND UNUSUAL INCIDENTS**

3848.1 The Operator, Residence Director, or staff member who witnesses or discovers a Major Unusual Incident (MUI) shall orally notify the Department and the resident's representatives, if any, immediately. MUIs include death, serious

illness, medical emergency, physical injury, accident, physical assault or abuse, suicide attempt, severe adverse reaction from medication, or other Major Unusual Incident involving the resident or staff. The notification shall be in compliance with this section and DMH Policy 480.1C and DMH Policy 482.1 (accessible at <https://dbh.dc.gov/node/240592>) or subsequently adopted Department policies concerning the reporting of abuse and neglect. The Operator, Residence Director, or staff member shall document the incident in the resident's permanent record.

- 3848.2 Each oral notice required by § 3848.1 shall be followed by a written unusual incident report to the Department within twenty-four (24) hours of the MUI or on the next business day. The MUI report shall be prepared in conformity with DMH Policy 480.1C by the staff member who witnessed or discovered the incident. The MHCRF shall ensure that a copy of the unusual incident report is maintained in the residence.
- 3848.3 The Operator, Residence Director or staff member shall prepare and submit to the Department a follow-up report within ten (10) days of the incident if full details were not provided in the initial report or if follow-up actions were needed.
- 3848.4 The Operator, Residence Director, or staff member who witnesses or discovers an unusual incident that does not rise to the level of a MUI, shall report the UI in writing, to the Department in conformity with DMH Policy 480.1C, within seven (7) business days of the incident and shall maintain a copy of the report at the MHCRF.
- 3848.5 In addition to filing the unusual incident report required by § 3848.2 each MHCRF shall thoroughly investigate all MUIs occurring at the MHCRF, including any allegations of mistreatment by a MHCRF employee, volunteer, resident, or any other person.
- 3848.6 The MHCRF shall promptly report findings made and actions taken as a result of the investigation to the Department. The investigation shall be documented in a report that is signed and dated by the Operator or Residence Director.

### **3849 RESIDENT STATUS PROCEDURES**

- 3849.1 Each MHCRF shall provide a resident roster to DBH as admissions occur after initial licensure until at full capacity, whenever there is a new admission or change in residents within the facility, and at the time of application for annual licensure renewal.
- 3849.2 Each MHCRF shall maintain a "day-night book" in which emergencies and other unusual occurrences are recorded by the responsible staff person on duty. Staff on duty shall observe and assess the behavior and well-being of each resident prior to the end of his or her work day and shall record any emergencies, unusual

occurrences or significant behavioral or health concerns in the day-night book, and also alert incoming staff.

3849.3 Each MHCRF shall inform the Department whenever a resident moves from the facility, is missing for twenty-four (24) hours or more, or left the facility to visit friends or relatives and has not returned within the expected time frame. This information shall also be recorded in the day and night book.

3849.4 Each MHCRF shall notify the Department of an increase in the occupancy level at the MHCRF.

3849.5 If a resident dies, the Owner, Residence Director, and staff on duty shall:

- (a) Not disturb the body;
- (b) Promptly notify the resident's attending physician, next-of-kin, legal guardian, if any, the Department, the resident's CSA treatment team or other mental health care provider, the District's Metropolitan Police and the LTCO;
- (c) If the circumstances of the death are suspicious, the death is sudden, unexpected or unexplained, or the death is violent including accidental, homicidal or suicidal, promptly notify the Office of the Chief Medical Examiner; and
- (d) Abide by the District laws governing the investigation and reporting of deaths under the jurisdiction of the Medical Examiner.

### **3850 MINIMUM QUALIFICATIONS FOR PERSONS WORKING IN MHCRF**

3850.1 Every Residence Director and staff person employed by the MHCRF shall meet the following requirements prior to commencing work at the facility and maintain compliance with these requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Have a high school diploma or the equivalent;
- (c) Have at least one (1) year of experience working with persons with mental illness or one (1) year of education in human services, or a combination of education and experience totaling at least one (1) year;
- (d) Have met criminal background check requirements as set forth in §§ 3850.10 through 3850.14;



- (e) Have had a physical examination completed by a licensed physician or other licensed and qualified health care provider, and submitted a certification that he or she is free of communicable disease to the MHCRF prior to commencing work and annually thereafter;
- (f) Have produced a current health certification that includes the result of an intra-dermal tuberculin skin test or chest x-ray indicating no active tuberculosis and documentation of any other screenings, immunizations or certifications that may be required by the Department of Health prior to commencing work and annually thereafter;
- (g) Have a current First Aid Certificate from the Red Cross or other organization recognized by the Department, including training in the Heimlich maneuver;
- (h) Have a current CPR (cardio-pulmonary resuscitation) Certificate from the Red Cross or other organization recognized by the Department;
- (i) Have a current FPM or FSM certification, if engaged in any food preparation at the facility, as provided in § 3834.1 and § 3834.2;
- (j) Meet any additional education, experience, licensure, or certification qualifications required pursuant to a current contract with the Department.

3850.2 The MHCRF shall also ensure timely renewal of all certifications required by §§ 3850.1 (e), (f), (g), (h) and (i), and attendance at periodic training as required by the Department, including attendance by new staff at the first Mental Health First Aide course offered by DBH after hire.

3850.3 A volunteer may provide additional support services at the MHCRF while staff is present if the volunteer meets the requirements of §§ 3850.1(a), (c), (d), (e) and (f), and, if engaged in food preparation, (i).

3850.4 No person who is not a staff member can reside at the MHCRF, unless:

- (a) The MHCRF has provided written notice to the Department that the person will be residing at the facility;
- (b) The individual has met the requirements of §§ 3850.1 (a), (c), (d), (e) and (f), and, if engaged in food preparation, (i); and
- (c) The individual's presence does not cause the MHCRF to exceed occupancy limits.

3850.5 A home health aide or personal care aide providing services to individual residents shall provide documentation of certification by the D.C. Board of

Nursing pursuant to 17 DCMR, Chapter 93, and if providing services reimbursed by Medicaid, shall meet applicable requirements in 29 DCMR, Chapter 51.

- 3850.6 Each personal care aide providing services to individual residents shall provide documentation of training and certification pursuant to 29 DCMR, Chapter 50, shall be employed by a District licensed home health agency in good standing with the D.C. Department of Health, and shall be supervised by a physician or nurse in accordance with 22-B DCMR, Chapter 39.
- 3850.7 An individual providing other support services at a MHCRF shall have the requisite professional license or certificate to perform the applicable service.
- 3850.8 No person shall provide services to residents at the MHCRF who does not meet the requirements of this section, except District of Columbia licensed health care professionals or identified members of the resident's CSA treatment team.
- 3850.9 No child or youth under the age of eighteen (18) shall reside in a MHCRF for any reason.
- 3850.10 Each MHCRF shall ensure that a criminal background check in accordance with the Criminal Background Check Act and any applicable District implementing regulations is obtained for each "unlicensed person" as defined in this chapter, who will work in the facility as an employee or contract worker or who will have unsupervised access to the facility and residents, including the Operator, the Residence Director, staff, or volunteers. Any unlicensed person who has not had a criminal background check must remain in the immediate presence of the Operator or a staff person at all times.
- 3850.11 The Operator shall ensure that the background check is completed and obtain verification that there is no disqualifying history prior to allowing an unlicensed person to work at the facility or have unsupervised access to the facility and residents.
- 3850.12 No person, who has been convicted of a disqualifying crime within the seven (7) years preceding the background check or whose name appears on one of the following registers or websites shall work at the MHCRF as an Operator, Residence Director, contractor, employee or volunteer, or have unsupervised access to the facility and residents:
- (a) The Nurse Aide Abuse Registry maintained by the Mayor;
  - (b) The Dru Sjodin National Sex Offender Public Website, (or other sex offender registry or website subsequently mandated by District rules); or
  - (c) The D.C. Child and Family Services Agency Child Protection Register.

3850.13 The MHCRF shall ensure that each unlicensed person undergoes a criminal background check every four (4) years pursuant to 22-B DCMR, Chapter 47.

3850.14 If an MHCRF learns that a person is working at the facility or has unsupervised access to the facility and residents in violation of § 3850.12 and the Criminal Background Check Act, the MHCRF shall inform DBH within forty-eight (48) hours.

**3851 ADDITIONAL QUALIFICATIONS APPLICABLE TO OPERATORS AND RESIDENCE DIRECTORS**

3851.1 In addition to meeting the requirements of § 3850.1 for staff, the Operator and Residence Director shall:

- (a) Have at least two (2) years of experience in human services including one (1) year of working with persons with mental illness prior to employment;
- (b) Have a Bachelor of Arts (“B.A.”) or Bachelor of Science (“B.S.”) degree or equivalent experience in addition to the experience required in (a);
- (c) Be able to demonstrate computer literacy and competence in budget planning, financial management, and program development;
- (d) Demonstrate, through references, documentation of education and experience, and compliance with this chapter, the ability to carry out the responsibilities set forth in §§ 3852 and 3853 prior to employment;
- (e) Participate in training, workshops, and seminars developed for Operators and Residence Directors by the Department within ninety (90) days after hire.

3851.2 If the Operator is incorporated, the Residence Director acting on behalf of the corporation shall meet the requirements of § 3851.1.

**3852 MINIMUM STAFFING REQUIREMENTS**

3852.1 Each MHCRF shall ensure that:

- (a) Every person who provides direct services to residents at the MHCRF or who regularly visits the MHCRF is properly screened to ensure he or she meets the requirements of § 3850 and that all credentials are documented and current, except that the MHCRF shall not be required to review the credentials of Department or certified CSA personnel who may periodically visit and provide services at the facility;

- (b) Qualified staff, who are employed by and responsible to the Operator, are on site at the MHCRF twenty-four (24) hours a day, and that the MHCRF is properly supervised by competent staff at all times. These staff shall be capable of recognizing visible changes in each resident's physical and mental condition and taking responsible action in the case of an emergency;
- (c) The MHCRF maintains staffing ratios and staff qualifications consistent with:
  - (1) Its designated licensure category as set forth in §§ 3857, 3858, 3859 and 3860;
  - (2) The terms of any current contract with the Department for residential services; and
  - (3) The needs of the residents as determined by a needs-assessment conducted using a Department-selected assessment instrument;
- (d) Its Residence Director is responsible for the overall management and operation of not more than five (5) MHCRFs housing not more than a total of thirty (30) residents, or such lesser number of MHCRFs and residents as may be required by contract with DBH;
- (e) Volunteers, home health aides, personal care aides reimbursed by Medicaid, and any other persons not employed by the MHCRF are not used as substitutes for MHCRF staff and are not left in charge of the facility;
- (f) Home health aides or personal care aides assigned to individual residents are not directed to perform and do not perform general staff duties at the facility;
- (g) Employees and volunteers providing services at the MHCRF are properly supervised, trained, and directed in applying MHCRF policies and procedures, including the MHCRF Emergency Preparedness Plan, COOP, health care emergency procedures, and the requirements of this chapter;
- (h) The facility is in compliance with District and federal wage and hour laws and staffing is adequate to ensure that no staff member is required to work an unreasonable number of hours without appropriate relief or staff rotation;
- (i) Staff require each person, other than a resident, who enters or leaves the facility, to sign in and sign out, with his or her name, title, reason for visiting and time in and out.

- 3852.2 Staff shall be on-site and provide supervision, meals, and assistance with the tasks of daily living to the residents. On-site staff shall also ensure the overall health, safety, and welfare of the residents.
- 3852.3 The MHCRF shall not require residents to attend day programs or activities or be absent from the MHCRF during the day. Residents shall be permitted to remain in the MHCRF, work, or participate in a structured day program or other daily activity.
- 3852.4 Each person who requires licensure, certification, or registration to provide care to residents shall be licensed, certified, or registered under the laws and regulations of the District.
- 3852.5 Each employee shall be assigned duties consistent with his or her license, job description, training, and experience.

**3853 RESPONSIBILITIES OF OPERATORS AND RESIDENCE DIRECTORS**

- 3853.1 In addition to meeting the requirements of § 3852 and other requirements set forth in this chapter, each Operator and Residence Director shall be responsible for:
- (a) Supervising the day-to-day management and operation of the MHCRF, including supervision of staff, hiring and firing, purchase of food and supplies, arranging repairs, medication management, sanitation, safety, laundry, dietary services, and other services relating to the health and welfare of each resident;
  - (b) Implementing the policies, practices, and procedures of the MHCRF, including required screening of prospective residents and staff;
  - (c) Ensuring that all MHCRF procedures, records and reports required by §§ 3824, 3825, 3838, 3839, 3846, and 3854 are properly developed and maintained in one (1) or more secure files at the facility;
  - (d) Keeping the Department informed of any changes in the phone number, facsimile number, or e-mail address for the MHCRF;
  - (e) Ensuring that residents are provided with a current telephone number where residents can, at all times, contact the MHCRF and the MHCRF staff person on duty to allow residents to inform the MHCRF and staff of an emergency or other concerns;
  - (f) Ensuring that the Department is provided with a current telephone number at which the MHCRF and MHCRF staff can be contacted at all times;

- (g) Ensuring that a current listing of the following telephone numbers is posted conspicuously in the facility and readily accessible to all staff:
  - (1) 911;
  - (2) The Comprehensive Psychiatric Emergency Program (CPEP);
  - (3) The Department's Office of Consumer and Family Affairs;
  - (4) The organization responsible for the protection and advocacy system under the federal Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. §§ 10801 *et seq.* Mentally Ill Individuals Act;
  - (5) Adult Protective Services; and
  - (6) The LTCO; and
- (h) Ensuring that staff can readily access individual information on residents including the information required by § 3846.

3853.2 The Operator and Residence Director shall ensure that no employee or volunteer provides direct services to residents while the person:

- (a) Is under the influence of alcohol or any mind-altering drug, substance, or combination thereof; or
- (b) Has a communicable disease that poses a health risk to residents and cannot be safely addressed by universal precautions.

**3854 PERSONNEL RECORDS**

3854.1 Each MHCRF shall have written personnel policies, which shall be made available to the Department and to each staff member and shall include the following:

- (a) The hours of work, policies regarding on duty requirements, compensation time, night-time duties, work relief provisions for live-in employees, vacations, sick leave, insurance, and other benefits, if any;
- (b) A description of the duties for each category of employee;
- (c) Provisions for new staff orientation and annual in-service training of staff; and

- (d) Provisions for disciplinary action or termination for illegal activity, negligence, or misconduct that occurs on the job.

3854.2

Each MHCRF shall maintain accurate personnel records for each Residence Director, staff member, and volunteer in a secure location at the facility that shall include the following information:

- (a) Name, address, gender, and social security number;
- (b) Current professional license or registration number, if any;
- (c) Record of education, training, prior employment, and evidence of attendance at orientation, training, workshops, and seminars sponsored by the Department;
- (d) Current health certification, including results of an annual intra-dermal tuberculin skin test or chest x-ray indicating no active tuberculosis;
- (e) Verification of previous employment, if any;
- (f) Documentation that the employee or volunteer has had a criminal background check in accordance with § 3850 and has not been convicted of a disqualifying crime, in accordance with the Criminal Background Check Act and 22-B DCMR, Chapter 47;
- (g) Documentation of certification in emergency first aid, CPR, and the Heimlich Maneuver;
- (h) Documentation of certification as an FPM or FSM if engaged in food preparation;
- (i) Dates of employment;
- (j) Position held by the employee;
- (k) Documentation of any disciplinary issues;
- (l) Copy of the employment agreement between the MHCRF and employee, which shall include basic terms of employment including, at a minimum:
  - (1) Salary or hourly rate of pay;
  - (2) Hours;
  - (3) Duties;

- (4) Benefits; and
- (5) A statement that employees hold a position of trust in relation to residents, that employees shall not harass, exploit, or physically, emotionally, or sexually abuse residents, or have sexual relations with residents, and that any violation of these prohibitions shall be grounds for immediate termination and may also result in a report to Adult Protective Services and the police.

3854.3 Each MHCRF shall also maintain a record of the dates and times that each volunteer is present or assisting at the facility.

3854.4 Each MHCRF shall maintain payroll records and weekly staff schedules for each Residence Director and employee for a period of at least six (6) months and provide copies to the Department upon request.

3854.5 Each MHCRF shall maintain copies of any agreements with contractors or consultants related to the operation of the MHCRF.

**3855 FINANCIAL RECORDS**

3855.1 Each MHCRF shall maintain all financial records related to the building where the MHCRF is located and the MHCRF business as provided in this section.

3855.2 Each MHCRF shall immediately submit or make available mortgage, rent, utilities, tax and insurance information when requested by the Department.

3855.3 Financial records related to the building where the MHCRF is located shall include all mortgage, rent, utilities, tax and insurance payments, home repairs, and renovations and shall be maintained in an orderly file for a period of at least three (3) years.

3855.4 Other business financial records shall include receipts for food purchases, household supplies, and professional infestation treatment, and shall be maintained in an orderly file for at least one (1) year.

3855.5 Financial records shall be maintained at the facility or at the Operator's business office in the District of Columbia and shall, upon request, be provided within twenty-four (24) hours for inspection by the Director.

3855.6 Where an Operator operates several facilities and buys food, bedding, or other household supplies for several facilities at one time, the Operator shall document on the financial records and receipts the dollar amount allocable to each MHCRF.



3855.7 Each MHCRF shall submit a financial report to the Director every six (6) months in accordance with DBH policies and directives and any current contract between DBH and the MHCRF Operator.

**3856 PAYMENT OF DISTRICT FUNDS**

3856.1 No District of Columbia funds for room and board shall be paid to any MHCRF or to any person residing in a MHCRF for his or her maintenance in that facility unless the MHCRF is licensed pursuant to this chapter.

3856.2 No person shall be referred by the Director or designee for the Optional State Payment who is residing in an unlicensed facility. Further, no unlicensed facility, rooming house, or boarding house shall be entitled to receive the Optional State Payment for the maintenance of a person residing in the facility, unless the facility is licensed pursuant to this chapter.

**3857 SUPPORTED RESIDENCE**

3857.1 A Supported Residence (SR) shall meet the minimum requirements for a home-like living environment, staffing, and resident care set forth in §§ 3800, 3850 and 3852.

3857.2 An SR shall be appropriate for a maximum of eight (8) adults with a principal diagnosis of serious and persistent mental illness who require twenty-four (24) hour supervision. A higher number of residents may be allowed where “grandfathered” or specifically authorized by the Director pursuant to § 3800.5.

3857.3 Each person seeking residential placement in an SR shall have a principal diagnosis of mental illness and be in need of twenty-four (24) hour staff supervision to assist with ADLs, meals, lodging, and recreation. Residents may remain in the residence, work, or participate in a structured day program, or other daily activity. Attendance at a day program shall not be mandatory for persons seeking placement in an SR.

3857.4 There shall be an assigned Residence Director for each SR who shall provide or arrange for supervision and coordinate services to ensure that each resident's health, safety, and welfare are protected.

3857.5 An SR shall maintain a minimum ratio one (1) staff member for each eight (8) residents or fewer, at all times, for purposes of complying with this section and receipt of the per diem payments.

3857.6 An SR shall provide awake supervision a minimum of sixteen (16) hours a day, and shall provide awake supervision during the night when required to adequately address the needs of one or more residents experiencing a period of destabilization, an emergency, or other situation requiring prompt attention.

3857.7 The resident's treatment team and the facility's Residence Director, in conjunction with the Department, shall determine whether a person is appropriately placed in an SR.

3857.8 The Residence Director and staff at an SR shall also meet any additional qualifications or higher staff-to-resident ratios required pursuant to a current contract between the MHCRF and the Department for SR services.

### **3858 SUPPORTED REHABILITATIVE RESIDENCE**

3858.1 A Supported Rehabilitative Residence (SRR) shall provide on-site rehabilitative services in addition to meeting the minimum MHCRF requirements for a home-like environment, staffing, and resident care set forth in §§ 3800, 3850 and 3852.

3858.2 An SRR shall be appropriate for a maximum of eight (8) adults (unless a higher number is specifically authorized pursuant to § 3800.5) with a principal diagnosis of serious and persistent mental illness who require twenty-four (24) hour supervision and on-site rehabilitation and who may require specialized services on-site.

3858.3 Each person seeking residential placement in an SRR shall have a principal diagnosis of mental illness, be in need of twenty-four (24) hour staff supervision to assist with ADLs, meals, lodging, and recreation, and shall also require on-site rehabilitation. Residents may remain in the residence, work, or participate in a structured day program or other daily activity. Attendance at a day program shall not be mandatory for persons seeking placement in an SRR.

3858.4 Specialized services, such as medication administration, limited or intermittent nursing care, or physical therapy, shall be provided as necessary on a scheduled basis as established in the resident's IRP. These services shall be provided by appropriate and qualified:

- (a) District of Columbia licensed health care professionals; or
- (b) Nursing assistive personnel, such as Trained Medication Employees, Medication Aides, or Certified Nursing Assistants certified by the D.C. Board of Nursing and working within the scope of their certification with required supervision.

3858.5 An SRR shall maintain a staff to resident ratio of at least one (1) to eight (8), twenty-four (24) hours per day, and at least two (2) staff persons for every five (5) to eight (8) residents during periods of peak activity as provided in §§ 3858.6 and 3858.7. If there are four (4) or fewer residents, a second staff person is not required, except as provided in § 3858.8.

- 3858.6 An SRR shall determine the hours of peak activity based upon the hours that meals are served and when most residents are home and awake. At a minimum, the following are peak hours for purposes of complying with this section and receipt of the per diem payments: 6:00 a.m. to 9:00 a.m. and 5:00 p.m. to 8:00 p.m.
- 3858.7 The Department may approve a written MHCRF staffing plan with different peak hours upon a showing that the MHCRF is providing adequate staffing coverage based upon the residents' individual schedules. The SRR shall maintain a record of any changes in the peak activity hours and work schedules and the reason for the changes.
- 3858.8 An SRR shall provide awake supervision a minimum of sixteen (16) hours a day and shall provide awake supervision twenty-four (24) hours a day when required to adequately address the needs of one or more residents experiencing a period of destabilization or residents who require twenty-four (24) hour awake supervision on an ongoing basis in order to be maintained within the SRR and in the community.
- 3858.9 An SRR shall have the capacity to provide one-to-one support to residents on a periodic basis, as needed, to care for and safeguard the resident and other residents of the facility.
- 3858.10 In addition to the general staff requirements in this chapter, staff shall be responsible for providing rehabilitative services, therapeutic support, management, and re-direction consistent with the resident's IRP. Staff shall provide a consistent and therapeutic environment where through daily contact and interaction the resident's needs and progress are assessed.
- 3858.11 Rehabilitation in an SRR shall be coordinated under the direction of the resident's designated clinical treatment team in conjunction with the Residence Director and facility staff.
- 3858.12 There shall be an assigned Residence Director who shall provide or arrange for supervision and coordination of rehabilitative and other required services at the SRR to ensure that each resident's health, safety, and welfare are protected.
- 3858.13 The resident's clinical treatment team and the facility's Residence Director, in conjunction with the Department shall determine whether a person is appropriately placed in an SRR.
- 3858.14 The Residence Director and staff at an SRR shall also meet any additional qualifications or higher staff-to-resident ratios required pursuant to a current contract between the MHCRF and the Department for SRR services.

**3859 INTENSIVE RESIDENCE**

- 3859.1 An Intensive Residence (IR) shall provide on-site medical assistance, nursing, and rehabilitative services, in addition to meeting the minimum MHCRF requirements for a home-like environment, staffing, and resident care set forth in §§ 3800, 3850 and 3852.
- 3859.2 An IR is appropriate for a maximum of eight (8) adults with a principal diagnosis of serious and persistent mental illness who have special needs due to co-morbid medical conditions that cannot be adequately provided for in an SR or SRR. These residents require twenty-four (24) hour staff supervision and enhanced care, and may need periodic one-to-one support for medical conditions or due to the intensity of psychiatric symptoms.
- 3859.3 An IR shall have a staff-to-resident ratio of two (2) to eight (8), 6 a.m. to 10 p.m. daily whenever a resident is present. Additional staff shall be available during times of peak activity. At a minimum, the following are peak hours for purposes of complying with this section and receipt of the per diem payments: 6:00 a.m. to 9:00 a.m. and 5:00 p.m. to 8:00 p.m.
- 3859.4 The Department may approve a written MHCRF staffing plan with different peak hours upon a showing that the MHCRF is providing adequate staffing coverage based upon the residents' individual schedules. The IR shall maintain a record of any changes in the peak activity hours and work schedules and the reason for the changes.
- 3859.5 An IR shall have the capacity to provide one-to-one staffing when necessary as determined by the resident's treatment plan and the immediate needs of the resident and other residents in the facility.
- 3859.6 Awake staff is required twenty-four (24) hours per day in an IR.
- 3859.7 Staffing shall be provided in accordance with the special program needs of residents including geriatric, dual diagnosis, behavioral, or nursing care, and may include medical, psychiatric, nursing, behavioral, social, and recreational services.
- 3859.8 The Residence Director or a staff member shall be present whenever residents are at the residence. In addition, the Residence Director or designee shall arrange for clinical back-up services. The mental health professional designated to provide back-up services shall:
- (a) Be available by telephone at all times;
  - (b) Be able to reach the residence within thirty (30) minutes in case of an emergency; and

- (c) Be identified by name with an emergency telephone number provided to residents and staff.

- 3859.9 Each Residence Director of an IR shall meet the requirements of § 3851 and shall also meet any additional professional license or experience qualifications, or higher Residence Director-to-resident ratios required pursuant to a current contract between the MHCRF and the Department for IR services.
- 3859.10 Each IR shall have a full-time Registered Nurse at the facility a minimum of eight (8) hours per day. In addition, a Licensed Practical Nurse (LPN) shall be on duty at the facility the remaining sixteen (16) hours a day or whenever an RN is not on duty.
- 3859.11 “On call” RN nursing consultation, supervision, and support shall be available to the LPN and any other staff on duty whenever an RN is not on duty at the facility. The LPN shall be under the general supervision of a Registered Nurse at all times.
- 3859.12 The resident's clinical treatment team and the facility’s Residence Director in conjunction with the Department, shall determine whether a person is appropriately placed in an IR.
- 3859.13 An IR shall be in compliance with applicable requirements under the Americans with Disabilities Act, including accessibility requirements for bedrooms, living spaces and bathrooms.

**3860 TRANSITIONAL RESIDENTIAL BEDS**

- 3860.1 Transitional residential beds (SR-Transitional) shall be located in a Supported Residence facility and shall meet all requirements of a SR MHCRF; except that a SR-Transitional may have up to ten (10) beds in a single facility and may maintain a staff to resident ratio of one (1) to ten (10).
- 3860.2 A SR-Transitional is a MHCRF designed for individuals who currently require the care and supervision provided in a SR, but who have been assessed by their treatment team and DBH as having the potential to live independently with necessary recovery and transition planning assistance. A primary purpose of the SR-Transitional is to speed the transition from a higher to a lower level of care in the community.
- 3860.3 Individuals appropriate for placement in a SR-Transitional facility include adults who may be at risk of becoming homeless, have been recently hospitalized, have been dually diagnosed with a substance abuse disorder, or otherwise lack essential skills necessary to move immediately to permanent supported housing or independent living in the community.

- 3860.4 The length of stay in a SR-Transitional is intended to range from six (6) months to a maximum of one (1) year, based upon the temporary resident's ability to accept a permanent living arrangement. The one (1) year maximum period can be extended by the Department on a monthly basis for cause, upon request by the MHCRF.
- 3860.5 Not more than ten (10) transitional residential beds shall be located in one (1) facility, unless a waiver is specifically authorized by the Director.
- 3860.6 A SR-Transitional shall assess the resident's needs upon admission and develop a transition plan for each resident in coordination with the resident and his or her CSA. The transition plan shall include specific goals and objectives and the specific services, and behavioral and psycho-educational supports that will be provided to enable the resident to transition to supported housing or independent living.
- 3860.7 A SR-Transitional shall meet all requirements and provide all deliverables required by any contract between the Department and the transitional MHCRF, in addition to meeting all requirements of this chapter. In addition to the staff qualification requirements in Section 3850, each SR-Transitional Residence Director shall have at least one (1) year additional experience in working with homeless persons.
- 3860.8 Notwithstanding § 3860.1, the Department may require by contract that a MHCRF with transitional beds maintain a higher staff to resident ratio than a one (1) to ten (10) staff to resident ratio. Failure to comply with the ratio mandated by contract shall be a violation of this section.
- 3860.9 Each SR-Transitional shall work with the resident, the resident's treatment team, and the Department to ensure that the individual is appropriately placed in a SR-Transitional and is transferred to more permanent housing as soon as appropriate.
- 3860.10 When applying for a MHCRF license pursuant to § 3805, the Operator shall specify that it wishes to receive a license for a SR-Transitional.

### **3861 MHCRF TRANSFER, DISCHARGE, AND RELOCATION**

- 3861.1 The MHCRF shall promptly notify the Director, the resident's CSA treatment team or other mental health care provider, and the resident's physician when the resident's physical or mental condition changes and the resident requires services or supports that may require discharging, or transferring the resident, or relocating the resident within the facility. Under no circumstances shall a resident be discharged, transferred, or relocated without notifying the Department.
- 3861.2 Every discharge, transfer, or relocation of any resident shall be in full compliance with title III of the Nursing Home and Community Residence Facility Residents'

Protection Act, including the MHCRF's reasons for seeking to transfer, discharge, or relocate the resident, and all notice and hearing requirements.

- 3861.3 A discharge, transfer, or relocation of any resident shall be consistent with the resident's IRP.
- 3861.4 The discharge, transfer, or relocation of a resident of a MHCRF that receives contract funds from the Department shall be subject to prior approval by the Director in addition to the other requirements of this section. Failure to do so may result in the loss of contract funds.
- 3861.5 Ten (10) days prior to the issuance of a twenty-one (21) day notice for an involuntary transfer or discharge, the MHCRF shall schedule a case conference with the resident and a representative of the CSA and shall notify the Director and the LTCO of the date and time of the meeting.
- 3861.6 Residents who are hospitalized have a right to return to the facility in accordance with the terms and conditions of subsection 3861.9.
- 3861.7 In the event the resident's hospitalization does not meet the conditions of Subsection 3861.9 and the MHCRF seeks to transfer, discharge, or relocate the resident, the MHCRF shall comply with the Community Residence Facility Residents' Protection Act and this section.
- 3861.8 A MHCRF shall also comply with any additional requirements for transferring or discharging residents and for allowing residents to return to a facility after hospitalization or other absence from the facility, required by a current contract for MHCRF residential services between the Department and the MHCRF.
- 3861.9 A MHCRF shall coordinate with a resident's treatment team during periods of hospitalization to ensure the resident receives temporarily institutionalization benefits, if eligible. A resident who receives Supplemental Security Income and is admitted to a public institution, the primary purpose of which is the provision of medical or psychiatric care, or to a public or private Medicaid-certified medical treatment facility, shall be allowed to return to the MHCRF within ninety (90) days if:
- (a) A physician has certified in writing to the Social Security Administration that he or she expects the recipient to be medically confined for ninety (90) consecutive days or less;
  - (b) The resident's Supplemental Security Income has been continued during the period of hospitalization so that the resident may continue to maintain a home or living arrangement;

- (c) The MHCRF is receiving payment for the room occupied by or held for the resident; and
- (d) The resident's needs are consistent with services provided by the MHCRF as determined by the resident's treatment team in conjunction with the resident.

3861.10 In the case of an emergency situation caused by a natural disaster, extreme heat or cold, extended power outage, or other emergency where the MHCRF cannot safely care for residents at the facility and residents need to be temporarily moved to another location, the MHCRF shall immediately notify both the LTCO and the Department and advise them of the situation and the actions the MHCRF plans to take.

3861.11 If the MHCRF is not able to make direct contact, and time or conditions do not permit it to obtain advance authorization, the MHCRF shall leave a detailed message at both numbers, including the address or addresses to which residents are being relocated, and a phone number where the Operator can be reached. The MHCRF shall comply with the notice requirements in the Community Residence Facility Residents' Protection Act for any temporary move or relocation that is expected to exceed thirty (30) days.

3861.12 Where the MHCRF temporarily moves residents under the conditions described in § 3861.10, the MHCRF shall cooperate with the Department and the Ombudsman to facilitate immediate inspections, comply with legal requirements, and address resident needs.

3861.13 Whenever an Operator needs to temporarily move residents under the conditions described in § 3861.10, the Operator shall ensure that the temporary transfers:

- (a) Do not exceed forty-eight (48) hours unless requested by the Operator in writing and approved in writing by the Department; and
- (b) Are to locations that are:
  - (1) In the District of Columbia and in compliance with federal and District legal requirements;
  - (2) Safe for occupancy; and
  - (3) Equipped with adequate bathroom facilities and adequate accommodations for eating and sleeping.

3861.14 If occupancy limits are exceeded at another MHCRF to accommodate residents who have to be moved, the Operator shall ensure that the temporary increased occupancy does not create a hazard or danger for residents, and that resident needs are met.



3861.15 Once the emergency has abated, the MHCRF shall return the residents to the facility. No resident shall be permanently discharged, transferred or relocated under the emergency provisions unless the MHCRF or the Department has complied with Community Residence Facility Residents' Protection Act.

## 3899 DEFINITIONS

3899.1 When used in this chapter, the following terms shall have the meanings ascribed:

**“Activities of daily living”** – Basic life activities that include ambulating and transferring, bathing, dressing, grooming, toileting, and eating.

**“Administrative Procedure Act”** – the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §§ 2-501 *et seq.*).

**“Adult Protective Services Act”** – the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code §§ 7-1901 *et seq.*).

**“Americans with Disabilities Act”** – The Americans with Disabilities Act of 1990, approved July 26, 1990 (Pub. L. 101-336, 104 Stat. 328; 42 U.S.C §§ 12101 *et seq.*).

**“Applicant”** – an individual, corporation, partnership, or agency that applies for a license or renewal license to operate a MHCRF, is the Operator of the MHCRF business, and has an ownership or leasehold interest in the property where the MHCRF will be located.

**“Awake supervision”** – supervision by a staff person who is not sleeping or resting, is alert, on duty, and is prepared to address the needs of residents and any situations which may arise including matters requiring prompt attention and emergencies.

**“Behavioral Health Establishment Act”** -- the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141 *et seq.*).

**“Business days”** – calendar days excluding Saturdays, Sundays, and legal holidays.

**“Civil Infractions Act”** – the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.*).

**“Clean Hands Act”** – the Clean Hands Before Receiving A License or Permit Act of 1996, effective May 11, 1996 (D.C. Law 11-118; D.C. Official Code §§ 47-2861 *et seq.*).

**“Community Residence Facility”** – a facility that provides a sheltered living environment for individuals, eighteen (18) years of age or older, who desire or need such an environment because of their physical, mental, familial, social, or other circumstances, and who are not in the custody of the Department of Corrections. *See* § 2 of the Licensure Act (D.C. Official Code § 44-501). A community residence facility is included within the definition of a “community-based residential facility” under the District of Columbia Construction Codes Supplement, 12-A DCMR, § 202.

**“Consumer” or “Consumers”** – person or persons who seek or receive mental health services or supports funded or regulated by the Department of Behavioral Health.

**“Consumers’ Rights Act”** – the Mental Health Consumers’ Rights Protection Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code §§ 7-1231.01 *et seq.*).

**“Core Services Agency” or “CSA”** – a community-based provider of mental health services and mental health supports that is certified by the Department and that acts as a clinical home for consumers of mental health services.

**“Criminal Background Check Act”** – Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*).

**“Crisis bed”** – a bed provided in a residential setting that offers substantial quantities of psychological assistance to individuals in psychiatric crisis, until the immediate emotional crisis passes and an acceptable level of stability is regained, usually within 30 days.

**“DCRA”** – the District of Columbia Department of Consumer and Regulatory Affairs.

**“Department”** – the Department of Behavioral Health.

**“Dietitian”** – an individual who meets the qualifications and standards for membership in the American Dietetic Association and who applies the principles of nutrition and management to menu planning, food preparation, and service.

**“Director”** – the Director of the Department of Behavioral Health or the Director’s designee.

**“Discharge”** – termination of the resident’s stay at the MHCRF, due to action taken by the MHCRF or the Mayor, or by the choice of the resident.

**“District of Columbia Construction Codes”** – 2012 ICC Construction Codes as amended by the D.C. Construction Codes Supplement (2013), Title 12 DCMR, or currently adopted version of Construction Codes.

**“District of Columbia Fire Prevention Code”** – 2012 ICC Fire Code as amended by the D.C. Fire Code Supplement (2013), Title 12-H DCMR, or currently adopted version of the Fire Code

**“District of Columbia Housing Code”** – Title 14 DCMR.

**“District of Columbia Property Maintenance Code”** – 2012 ICC Property Maintenance Code as amended by the D.C. Property Maintenance Code Supplement (2013), Title 12-G DCMR, or currently adopted version of the Property Maintenance Code.

**“Disqualifying crime”** – a conviction of one of the following crimes within seven (7) seven years prior to a criminal background check: (1) murder, attempted murder, or manslaughter; (2) arson; (3) assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats-to-do bodily harm; (4) burglary; (5) robbery; (6) kidnapping; (7) theft, fraud, forgery, extortion or blackmail; (8) illegal use or possession of a firearm; (9) rape, sexual assault, sexual battery, or sexual abuse; (10) child abuse or cruelty to children; (11) unlawful distribution, or possession with intent to distribute, of a controlled substance; or (12) the equivalent of any of the foregoing in another state or territory.

**“Food Code”** – District of Columbia Food and Food Operations Code, Title 25-A DCMR.

**“Habitable room”** – an undivided, enclosed space with natural light and ventilation, including a room for living, eating, or sleeping, that complies with applicable District of Columbia Building and Housing Codes regulations.

**“Home-like environment”** – an integrated residential setting that meets the requirements of 42 C.F.R. § 441.301.

**“HIPAA”** – the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. 104-191, 110 Stat. 1936), and the

HIPAA Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule), 45 C.F.R. Parts 160 and 164.

**“Human Rights Act”** – the District of Columbia Human Rights Act, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401 *et seq.*).

**“Independence”** – the quality of being self-reliant and free from the control of others.

**“Independent living”** – living alone or with friends or relatives in a private home, apartment, or rooming house.

**“Individual Recovery Plan” or “IRP”** – a written plan for a resident’s continued treatment and care that includes goals, objectives, and interventions developed by a multi-disciplinary treatment team in consultation with the resident.

**“Licensee”** – a person or entity to whom a license to operate a MHCRF has been issued.

**“Licensure Act”** – the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*).

**“Limited or intermittent nursing care”** – simple nursing care provided on a periodic basis in a MHCRF, including blood pressure monitoring, insulin injections, and dressing changes, provided by a licensed RN or LPN, or under the supervision of a RN or LPN by a D.C. Board of Certified Nursing Assistant, Medication Aide, or other certified nursing assistive personnel, within the scope of their certification.

**“Long-Term Care Ombudsman” or “LTCO”** – the person designated under the Long-Term Care Ombudsman Act and referenced in § 101(7) of the Nursing Home and Community Residence Facility Residents Protection Act to perform the functions of the Long-Term Care Ombudsman in the District of Columbia.

**“Long-Term Care Ombudsman Act”** – the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code §§ 7-701.01 *et seq.*).

**“Major unusual incident” (“MUI”)** – An adverse event that can compromise the health, safety, or welfare of persons, employee misconduct, fraud, and actions that are violations of law or policy.

**“Mayor”** – the Mayor of the District of Columbia or his or her authorized designee.

**“Medication Aide”** – an individual who has been certified by the District of Columbia Board of Nursing to perform nursing assistive tasks and to administer medication under the supervision of a licensed nurse. A Medication Aide has met education, experience, and examination requirements pursuant to rules to be adopted by the D.C. Board of Nursing.

**“Mental Health Information Act”** – the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law. 2-136; D.C. Official Code §§ 7-1201.01 *et seq.*).

**“Mental health professional”** – a person who is specifically trained and, if required, licensed to provide services to mentally ill persons.

**“MHCRF”** – refers to Mental Health Community Residence Facility, the Operator, Residence Director, and staff members, as applicable.

**“Non-ambulatory”** – unable to walk or move from one place to another without personal or mechanical assistance.

**“Nursing Home and Community Residence Facility Residents’ Protection Act”** - the Nursing Home and Community Residence Facility Residents’ Protection Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Code §§ 44-1001.01 *et seq.*).

**“OAH Rules of Practice and Procedure”** – District of Columbia Office of Administrative Hearings Rules of Practice and Procedure, Title 1, Chapter 28 of the District of Columbia Municipal Regulations. (1 DCMR, Chapter 28)

**“Operator”** – the person or entity that owns the MHCRF business and who applies for and holds an MHCRF license as provided in §§ 3802.1 and 3805.1.

**“Optional State Payment”** – A supplemental payment for room, board, and care paid to District of Columbia residents who receive Supplemental Security Income and who live in a community residence facility or an assisted living facility as provided for in § 549 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.49).

**“Personal assistance”** – help with grooming, bathing, eating, walking, toileting, budgeting, making appointments, arranging transportation, and other

activities associated with daily living. Personal assistance may involve supervision, prompting, oversight, or hands-on care.

**“Provider”** – a person, agency, or organization that provides health or support services to a resident, including the Department, Core Services Agencies, the Comprehensive Crisis Emergency Program, agencies that contract with the District of Columbia to provide mental health, behavioral health, medical health, and other services, hospitals, private clinics, and Medicaid providers.

**“Provisional license”** – a license issued for not to exceed ninety (90) days to new MHCRFs to afford sufficient time and evidence to evaluate whether the new facility is capable of complying with this chapter, or issued to a regular license holder with deficiencies as provided in this chapter.

**“Regular license”** – a license issued for not to exceed one (1) year to a MHCRF that is in compliance with all applicable laws and regulations.

**“Relocation”** – the movement of a resident from one part or room of the MHCRF where he or she resides to another, whether voluntary or involuntary, pursuant to the Nursing Home and Community Residence Facility Residents’ Protection Act.

**“Representative Payee”** – an individual or organization appointed by the Social Security Administration to receive Social Security or Supplemental Security Income (SSI) benefits for someone who cannot manage or direct someone else to manage his or her money. The main responsibilities of a representative payee are to use the benefits to pay for the current and foreseeable needs of the beneficiary, properly save any benefits not needed to meet current needs, and keep records of expenses.

**“Residence Director”** – the individual responsible for the overall management and operation of the MHCRF, including hiring and firing, purchase of food and supplies, arranging repairs, and supervision of employees and volunteers. As provided in § 3804.1(d), a distinct Residence Director is required if the Operator is a corporation or partnership, or if the Operator does not personally manage the facility.

**“Resident”** – a person who lives in a MHCRF and has or should have a Room, Board and Care Agreement with the Owner.

**“Resident’s representative”** –

- (a) Any person who is knowledgeable about a resident’s circumstances and has been designated by that resident in writing to represent him or her;

- (b) Any person other than a facility who has been appointed by a court either to administer a resident's financial or personal affairs or to protect or advocate for a resident's rights; or
- (c) The Long-Term Care Ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraphs (A) or (B) of this paragraph.

**“Restraint”** – any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot easily remove and that restricts his or her freedom of movement or normal access to his or her body. “Restraint” also includes a medication that is used in addition to or in place of the resident's regular, prescribed drug regimen to control extreme behavior during an emergency, but does not include medications that comprise the resident's regular, prescribed medical regimen and that are part of the resident's service plan, even if their purpose is to control ongoing behavior.

**“Restricted license”** – a license issued for not to exceed 90 days which permits operation of a MHCRF but includes restrictions on the facility's operations including a prohibition against the MHCRF accepting new residents or from delivering services that it would otherwise be authorized to deliver.

**“Seclusion”** – the involuntary confinement of a resident alone in a room or an area from which the resident is either physically prevented from leaving, or from which the resident is led to believe he or she cannot leave at will.

**“Substantial compliance”** – meets most important requirements of the rules, has only a small number of outstanding deficiencies, and is without deficiencies or violations that are life threatening, pose an immediate or serious danger to the residents or facility staff, or jeopardize public health, safety, or welfare.

**“Trained Medication Employee”** – an individual employed to work in a program, including a MHCRF, who has successfully completed a training program approved by the District of Columbia Board of Nursing and is certified to administer medication to MHCRF residents under the general supervision of a registered nurse licensed in the District of Columbia in accordance with Title 17 DCMR Chapter 61.

**“Unlicensed person”** – A person not licensed by one of the health occupation boards pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), Chapter 12 of D.C. Official Code Title 3, who functions in a complementary or assistance role to licensed health care professionals in providing direct patient care or in performing common

nursing tasks. The term “unlicensed person” includes nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides. The term “unlicensed person” also includes housekeeping, maintenance, and administrative staff or contractors who will foreseeably come in direct contact with patients.

**“Unusual incident”** – Any significant occurrence or extraordinary event different from the regular routine or established procedure that does not rise to the level of a MUI.

**Chapter 38, COMMUNITY RESIDENCE FACILITIES FOR MENTALLY ILL PERSONS, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is repealed in its entirety.**