

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY RULEMAKING

The Interim Director of the Department of Health, pursuant to the authority set forth in section 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 93 (Home Health Aides) Title 17 (Business, Occupations, and Professions) of the District of Columbia Municipal Regulations ("DCMR").

This emergency rulemaking establishes a temporary mechanism for home health aide ("HHA") certification by endorsement or by waiver of examination under which: (1) a Maryland certified nursing assistant ("CNA") may be granted temporary certification as an HHA in the District; and (2) a District of Columbia CNA may be allowed to obtain an HHA certification without taking the HHA examination. Because District of Columbia CNAs must meet more rigorous requirements (including an examination) to obtain CNA certification in the District than Maryland CNAs, this rulemaking grants temporary eligibility for regular HHA certification to District of Columbia CNAs by waiver of examination.

The rulemaking also imposes reporting requirements for the employers of CNAs who apply for HHA certification under these temporary provisions and defines the term "Maryland certified nursing assistant."

Emergency action is necessary because the Interim Director of the Department of Health finds that it is essential for the immediate preservation of health, safety, and welfare of District residents to allow Maryland CNAs who meet the requirements to be granted HHA certification by endorsement and District CNAs who meet the requirements to be granted HHA certification by waiver of examination, so that they may provide essential healthcare services to District residents. Moreover, this rulemaking allows for continuity of healthcare services provided by Maryland and District CNAs who practiced as HHAs under the Preserve Our Healthcare Workforce Temporary Amendment Act of 2021, effective February 18, 2022 (D.C. Law 24-59).

This emergency rulemaking was adopted by the Interim Director of the Department of Health on September 21, 2022 and became effective immediately on that date. The emergency rulemaking will expire one hundred twenty (120) days from the date of adoption, on January 28, 2023.

Chapter 93, HOME HEALTH AIDES, of Title 17, BUSINESS, OCCUPATIONS, AND PROFESSIONS, of the District of Columbia Municipal Regulations, is amended as follows:

Section 9306, CERTIFICATION BY ENDORSEMENT, is amended to read as follows:

9306 CERTIFICATION BY ENDORSEMENT, TEMPORARY CERTIFICATION, AND WAIVER OF EXAMINATION

9306.1 Except as provided in §§ 9306.2 and 9306.3, an applicant for endorsement as a home health aide (“HHA”) shall provide proof of the following:

- (a) Current registration or certification as an HHA or similar title and duties in another jurisdiction;
- (b) Verification from a current employer certifying the applicant’s ability to perform the skills listed in § 9315.1;
- (c) That the applicant has worked as an HHA or similar title and duties for at least five hundred (500) hours; and
- (d) Compliance with the requirements listed in § 9304.

9306.2 A Maryland certified nursing assistant (“Maryland CNA”), as defined in § 9399.1, who applies for temporary certification as an HHA no later than October 14, 2022, may be granted a certification to practice as an HHA in the District until January 13, 2023, and may earn up to five hundred (500) of the in-home service hours required by § 9306.1, if the following requirements are satisfied:

- (a) The Maryland CNA submits a complete application for temporary certification as an HHA prior to employment as an HHA in the District;
- (b) The Maryland CNA satisfies the criminal background check (“CBC”) requirement of § 9303 of this Chapter;
- (c) The Maryland CNA is vaccinated against COVID-19 or has an approved exemption on medical or religious grounds in compliance with §§ 230 - 231 of Subtitle B (Public Health and Medicine) of Title 22 (Health) and § 4019 of Title 17 (Business, Occupations, and Professions) of the District of Columbia Municipal Regulations (“DCMR”);
- (d) The Maryland CNA submits evidence of completion of a Maryland-approved program for CNAs;
- (e) The Maryland CNA holds at least an unexpired basic level of certification in good standing issued by the Maryland Board of Nursing;
- (f) The Maryland CNA is to be employed by a District-licensed healthcare facility that will:
 - (1) Maintain a record of the Maryland CNA working as a temporarily certified HHA;
 - (2) Conduct an onsite competency evaluation of the Maryland CNA by a registered nurse no later than fourteen (14) days after the Maryland

CNA starts as an HHA and attest that the evaluation included an assessment of the Maryland CNA's ability to provide the following services:

- (A) Assistance during emergencies in the home, including power outages, weather conditions, basic disaster procedures, emergency evacuation procedures (including assistive devices for evacuation), fire safety in the home, and steps to take in case of fire to ensure client safety;
 - (B) Basic food and nutrition, including safe food storage, safe meal preparation, meal planning, and modified diets;
 - (C) Proper use of assistive devices and lifts for in-home use; and
 - (D) Skilled services, including changing non-sterile dressings and simple dressings.
- (3) Maintain documentation of the competency evaluation in the Maryland CNA's personnel file;
 - (4) Provide an orientation to the Maryland CNA;
 - (5) Make all required documentation available to the Department upon request; and
 - (6) Provide a list to the Board of Nursing containing the names of any Maryland CNAs seeking employment by the facility who are applying under this subsection no later than October 14, 2022.

9306.3

A certified nursing assistant (CNA) licensed in the District who applies as an HHA by waiver of examination no later than September 30, 2022 may be granted HHA certification in the District without taking the examination required by § 9304.1(b)(2) if the following requirements are satisfied:

- (a) The CNA submits a complete application for HHA certification prior to employment as an HHA;
- (b) The CNA satisfies the criminal background check ("CBC") requirement of § 9303 of this Chapter;
- (c) The CNA is vaccinated against COVID-19 or has an approved exemption on medical or religious grounds in compliance with §§ 230 - 231 of Subtitle B (Public Health and Medicine) of Title 22 (Health) and § 4019 of Title 17 (Business, Occupations, and Professions) of the DCMR;

- (d) The CNA holds an unexpired CNA certification in good standing issued by the Department;
- (e) The CNA submits their CNA certification number issued by the Department;
- (f) The CNA submits an attestation from the employer stating that the CNA has been employed by a District-licensed healthcare facility as an HHA for at least forty-five (45) days under the Preserve Our Healthcare Workforce Temporary Amendment Act of 2021, effective February 18, 2022 (D.C. Law 24-59) prior to applying for certification as an HHA under this subsection; and
- (g) The employer provides a list to the Board of Nursing containing the names of CNAs seeking employment by the facility as an HHA who are applying under this subsection no later than October 14, 2022.

Section 9399, DEFINITIONS, is amended as follows:

Subsection 9399.1 is amended by adding the following new definition after the definition of “Licensed practitioner”:

Maryland certified nursing assistant (Maryland CNA) -- an individual who is certified by the Maryland Board of Nursing as a certified nursing assistant.