

**DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH**

**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in section 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984, D.C. Law 5-48, D.C. Official Code 844-504(a) (hereinafter "the Act"), and in accordance with Mayor's Order 98-137, dated August 20, 1998, hereby gives notice of the adoption of the following amendment to section 3211 of the rules concerning the licensure, construction and operating standards for nursing facilities, codified at 22 DCMR Chapter 32.

The amendment was first adopted as emergency rulemaking on December 6, 2004. The D.C. Council affirmatively approved the amendment by ratifying the "Nursing Facility Proposed Rulemaking Amendment Emergency Approval Resolution of 2004", Resolution # 15-812, on December 21, 2004. The amendment was published as emergency and proposed rulemaking on February 11, 2005, at 52 DCR 1327. No comments were received, and no changes have been made to the amendment as earlier adopted and published. Section 3211 of Chapter 32 of Title 22 of the DCMR is amended to read as follows:

**3211 NURSING PERSONNEL**

- 3211.1 Sufficient nursing time shall be given to each resident to ensure that the resident receives the following:
- (a) Treatments, medications, diet and nutritional supplements and fluids as prescribed, and rehabilitative nursing care as needed;
  - (b) Proper care to minimize pressure ulcers and contractures and to promote the healing of ulcers;
  - (c) Assistance in daily personal grooming so that the resident is comfortable, clean, and neat as evidenced by freedom from body odor, cleaned and trimmed nails, and clean, neat and well-groomed hair;
  - (d) Protection from accident, injury, and infection;
  - (e) Encouragement, assistance, and training in self-care and group activities;
  - (f) Encouragement and assistance to:
    - (1) Get out of bed and dress or be dressed in his or her own clothing, and shoes or slippers, which shall be clean and in good repair;
    - (2) Use the dining room if he or she is able; and
    - (3) Participate in meaningful social and recreational activities;
  - (g) Prompt, unhurried assistance if he or she requires or requests help with eating;
  - (h) Prescribed adaptive self-help devices to assist him or her in eating independently;
  - (i) Assistance, if needed, with daily hygiene, including oral care; and
  - (j) Prompt response to an activated call bell or call for help.
- 3211.2 Each facility shall have at least the following employees:
- (a) At least one (1) registered nurse on a twenty-four (24) hour basis, seven (7) days a week;
  - (b) Twenty-four (24) hour licensed nursing staff sufficient to meet nursing needs of all residents;

- (c) At least one practical or registered nurse, serving as charge nurse, on each unit at all times; and
  - (d) A minimum of two (2) nursing employees per nursing unit, per shift.
- 3211.3 Beginning no later than January 1, 2005, each facility shall employ sufficient nursing staff to provide a minimum daily average of 3.5 nursing hours per resident per day. Nursing staff shall include Registered Nurses (RN), Licensed Practical Nurses (LPN), and Certified Nurse Aides (CNA).
- 3211.4 The staffing requirements in subsection 3211.3 shall be adjusted upward for residents with higher nursing care needs and for residents with more acute conditions.
- 3211.5 The Department of Health may consider a waiver of the staffing requirements in subsection 3211.3 for a facility that has had, within the previous three (3) years, no deficiencies related to resident care that have exceeded the federal C level in scope and severity (no actual harm; potential for only minimal harm). The Department may also consider a waiver for a facility that has had, within the previous three (3) years, one (1) deficiency related to resident care at the federal D level in scope and severity (an isolated incident; no actual harm, potential for more than minimal harm), if the facility has demonstrated an otherwise good level of care.
- 3211.6 To meet the requirements of subsections 3211.2 and 3211.3(b), facilities of thirty (30) licensed occupied beds or more shall not include the Director of Nursing Services or any other nursing supervisory employee who is not providing direct resident care.
- 3211.7 Weekly time schedules shall be maintained and indicate the number and classifications of nursing personnel, including relief personnel who work on each unit for each tour of duty.
- 3211.8 Nursing personnel, licensed practical nurses, certified nurse aides, nurse aides, orderlies, and ward clerks shall be assigned duties consistent with their education and experience and based on the characteristics of the patient load.
- 3211.9 A facility shall not employ an individual, other than a certified nurse aide, as a nurse aide unless that person is enrolled and actively participating in a training and competency evaluation program approved by the District.
- 3211.10 A facility shall not employ an individual, other than a certified nurse aide, as a nurse aide if that person has been employed as a nurse aide for six (6) of the immediately preceding twelve (12) months and he or she has not completed a training and competency evaluation program approved by the District.
- 3211.11 The facility shall provide regular performance review and regular in-service education to ensure that individuals employed as nurse aides, including certified nurse aides, are competent to perform services as nurse aides.
- 3211.12 The facility shall ensure that nurse aides, including certified nurse aides, are competent in those skills necessary to care for residents' needs, as identified in the residents' individualized assessments and plans of care.

*This is the text of the Notice of Final Rulemaking as reported in the April 8, 2005 District of Columbia Register. The text of the Notice is only offered here for general information purposes. The Regulation may be amended or revoked. The text of the Regulation, as reproduced here, should not be relied upon without reviewing the appropriate version of the Regulation with legal counsel. The Regulation applicable to your situation may or may not be the version that was in effect at the time of any incident you may be evaluating, because some regulatory changes are retroactive and others are not. Further, there may be case law, legislative enactments, or regulatory materials that could affect the manner by which the Regulation should be read or interpreted under certain circumstances.*