

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), 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 his intent to take final rulemaking action to adopt the following amendments to Chapter 46 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendments establish standards of treatment and care for patients afflicted with chronic pain.

Chapter 46 (Medicine) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended to read as follows:

A new section is added to read as follows:

**4609 Standards for the Use of Controlled Substances for
the Treatment of Pain**

- 4609.1 A licensed physician shall prescribe, order, administer, or dispense controlled substances for pain only for a legitimate medical purpose based on accepted scientific knowledge of the treatment of pain or based on sound clinical grounds. All such prescribing shall be based on clear documentation of unrelieved pain and in compliance with applicable District or federal law.
- 4609.2 A licensed physician shall perform an evaluation of the patient by taking a complete medical history and performing a physical examination. The medical history and physical examination shall be documented in the medical record. The medical record shall contain a description of the following:
- (a) The nature and intensity of the patient's pain;
 - (b) The patient's current and past treatments for pain;
 - (c) The patient's underlying or coexisting diseases or conditions;
 - (d) The effect of the pain on the patient's physical and psychological function;
 - (e) A history of the patient's substance abuse if applicable; and

- (f) The presence of one or more recognized medical indications in the patient for the use of a controlled substance.
- 4609.3 A licensed physician shall maintain a written treatment plan which states the objectives used to determine treatment success, such as pain relief and improved physical and psychosocial function.
- 4609.4 The treatment plan shall indicate if any further diagnostic evaluations or other treatments are planned.
- 4609.5 The physician shall adjust drug therapy to the individual medical needs of each patient after treatment begins.
- 4609.6 The physician shall consider other treatment modalities or a rehabilitation program if necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.
- 4609.7 The physician shall discuss the risks and benefits of the use of controlled substances with the patient, person(s) designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent.
- 4609.8 If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician shall employ the use of a written agreement between the physician and patient outlining the patient's responsibilities, including, but not limited to:
- (a) Urine/serum medication levels screening when requested;
 - (b) Number and frequency of all prescription refills; and
 - (c) Reasons for which drug therapy may be discontinued, such as violation of an agreement.
- 4609.9 The physician shall do the following:
- (a) Review the course of treatment and any new information about the etiology of the pain at reasonable intervals based on the individual circumstances of the patient;
 - (b) Continue or modify the pain therapy depending on the physician's evaluation of the patient's progress;
 - (c) Reevaluate the appropriateness of continued treatment if treatment goals are not being achieved despite medication adjustments; and

- (d) Monitor the patient's compliance in medication usage and and related treatment plans.
- 4609.10 The physician shall refer the patient, as necessary, to another physician for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion.
- 4609.11 The physician shall consult with or refer to an expert for management of the following types of patients:
- (a) Patients with a history of substance abuse; or
 - (b) Patients with comorbid psychiatric disorders that require extra care, monitoring, and documentation.
- 4609.12 The physician shall keep accurate and complete records that include, but are not limited to:
- (a) The medical history and physical examination, including history of drug abuse or dependence, as appropriate;
 - (b) Diagnostic, therapeutic, and laboratory results;
 - (c) Evaluations and consultations;
 - (c) Treatment objectives;
 - (d) Discussion of risks and benefits;
 - (e) Treatments;
 - (f) Medications including date, type, dosage, and quantity prescribed;
 - (g) Instructions and agreements; and
 - (h) Periodic reviews.
- 4609.8 The physician shall maintain current records in an accessible manner that is readily available for review.
- 4699 DEFINITIONS**
- 4699.1 As used in this chapter, the follow terms shall have the meaning ascribed:

Chronic pain – a pain state that is persistent.

Pain – an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

Substance abuse – the use of any substance for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5 p.m., Monday through Friday, excluding holidays.