

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Section 988, entitled "Medicaid Fee Schedule," of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

DHCF reimburses Medicaid providers other than institutional providers whose rates are determined pursuant to a reimbursement methodology, in accordance with a Medicaid fee schedule. The Medicaid fee schedule is posted on a website maintained by DHCF. The fee schedule requires periodic adjustments, when necessary, to reflect changes in federal and District requirements, nationally-recognized coding systems, medical practice, and the relative value of services. These second emergency and proposed rules will require DHCF to publish a notice in the *D.C. Register* at least thirty days prior to the effective date of changes to the Medicaid fee schedule, unless the notice exceeds two (2) pages. If the notice of the changes to the Medicaid fee schedule exceeds two (2) pages, these rules will require DHCF to post the changes in the fee schedule on a website maintained by DHCF and include the website address in the notice that is published in the *D.C. Register*.

In order to prevent impediments that adversely affect access to quality Medicaid services and accurate reimbursements for services delivered by Medicaid providers, DHCF must have the ability to periodically update and adjust the fee schedule. Accordingly, emergency action is necessary for the immediate preservation of the health, safety and welfare of persons receiving these services.

An Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 22, 2015 at 62 DCR 6692. No comments were received. Two substantive changes were made in this notice of second emergency and proposed rulemaking in order to: (1) allow DHCF to post changes in the fee schedule on a website maintained by DHCF and include the website address in the notice that is published in the *D.C. Register* when the notice exceeds two (2) pages; and (2) clarify that in instances where a Medicaid fee is included in a rule, DHCF shall amend and publish a revised rule in the *D.C. Register*, and the requirements set forth in Section 988.4 shall not apply. This second emergency rulemaking was adopted on September 14, 2015 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days until January 12, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

A new Section 988, MEDICAID FEE SCHEDULE, is added to read as follows:

988 MEDICAID FEE SCHEDULE

988.1 The Medicaid fee schedule includes reimbursement rates for Medicaid covered services and is posted at www.dc-medicaid.com.

988.2 Medicaid covered services that are listed on the fee schedule include, but are not limited to, the following services:

- (a) Laboratory and x-ray services;
- (b) Physicians' services;
- (c) Medical care and other types of remedial care;
- (d) Home health services;
- (e) Dental services;
- (f) Durable Medicaid Equipment (DME);
- (f) Diagnostic, screening, preventive, and rehabilitative services; and
- (g) Hospice care.

988.3 DHCF shall review the Medicaid fee schedule periodically. The Medicaid fee schedule may be adjusted where necessary to:

- (a) Comply with changes in federal or District requirements;
- (b) Comply with changes in nationally-recognized coding systems, such as Healthcare Common Procedure Coding System (HCPCS), Current Procedural Terminology (CPT), and Code on Dental Procedures and Nomenclature (CDT);
- (c) Establish an initial allowable amount for a new procedure or a procedure based on information that was not available when the fee schedule was established for the current calendar year; and

- (d) Adjust the allowable amount when DHCF determines that the current allowable amount is:
- (1) Not appropriate for the service provided;
 - (2) Based on errors in data or calculation; or
 - (3) Ineffective for proper or efficient administration of the State Medicaid Program

988.4 DHCF shall publish a Public Notice in the *D.C. Register* which informs the public of changes to the Medicaid fee schedule. The Public Notice shall be published at least thirty (30) calendar days in advance of the change. The Notice shall describe the type of change, the reason for the change, the effective date of the change, and the Medicaid reimbursement rate. If the Public Notice of the changes to the Medicaid fee schedule exceeds two (2) pages, DHCF shall post the changes in the fee schedule consistent with the requirements set forth in this section on a website maintained by DHCF and include the website address in the Public Notice.

988.5 In those instances where a Medicaid fee is included in a rule, DHCF shall amend and publish the revised rule in the *D.C. Register* pursuant to the procedures of title I of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-501 *et seq.*), and the requirement of § 988.4 shall not apply.

999 DEFINITIONS

999.1 For purposes of this section, the following terms shall have the meanings ascribed:

Medicaid Fee Schedule - a comprehensive list of fee maximums used to reimburse providers on a fee-for-service basis.

Comments on the proposed rule shall be submitted, in writing, to Claudia Schlosberg, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFpubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.