

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF 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 (2012 Repl. & 2015 Supp.)), 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 an amendment to Section 995 (Medicaid Physician and Specialty Services Rate Methodology) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules amend Subsection 995.1 to authorize physician-administered chemotherapy drugs to be reimbursed at one hundred percent (100%) of the Medicare reimbursement rate, effective for services on or after May 1, 2016 contingent upon approval of the corresponding amendment to the District of Columbia State Plan for Medical Assistance (SPA). The approval would allow DHCF to: (1) maintain access to services for this very fragile population who are in need of chemotherapy drugs for treatment without compromising treatment efficacy or patient safety; and (2) ensure greater consistency and currency of the District's reimbursement model for chemotherapy drugs with other public and private payers. With this amendment, projected annual expenditures for chemotherapy drugs are estimated to be reduced from approximately \$1.2 million to \$500,000.

Lastly, these proposed rules amend Subsection 995.5 to align updates of the physician and specialty rates with the requirements for Medicaid fee schedule updates, set forth under Section 988 of Chapter 9 of 29 DCMR. This will enable DHCF to: (1) periodically and prospectively update the fee schedule for physician and specialty services while complying with advance notice requirements, rather than implementing annual updates on January 1; and (2) correspondingly update the reimbursement of physician-administered chemotherapy drugs periodically, rather than implementing updates on January 1.

Emergency rulemakings are implemented only for the immediate preservation of the public peace, health, safety, welfare, or morals, pursuant to 1 DCMR § 311.4(e). This emergency rulemaking will prevent the encumbrance in the funding of care for beneficiaries in need of chemotherapy drugs and ensure care is maintained for this fragile population in the District. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of the persons who are in need of physician-administered chemotherapy drugs, and to provide appropriate notice to providers about the processes to provide timely updates.

The District of Columbia Medicaid Program is also amending the State Plan to reflect these proposed changes to the approved methodology for physician-administered chemotherapy drugs. The State Plan amendment (SPA) must first be approved by the Council of the District of Columbia before submission to the U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS). These rules shall become effective for

services rendered on or after May 1, 2016, if the corresponding SPA has been approved by CMS with an effective date of May 1, 2016, or the effective date established by CMS in its approval of the corresponding SPA, whichever is later.

The emergency rulemaking was adopted on March 25, 2016 and shall become effective for services rendered on or after May 1, 2016. The emergency rules will remain in effect for one hundred and twenty (120) days or until July 23, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt this emergency and proposed rule not less than thirty (30) days from 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:**

**Subsection 995.1 of Section 995, MEDICAID PHYSICIAN AND SPECIALTY SERVICES RATE METHODOLOGY, is deleted in its entirety and amended to read as follows:**

995.1 Medicaid reimbursement rates for fee-for-service physician and specialist services shall be eighty percent (80%) of the rates paid by the Medicare Program as set forth in this section, except for physician-administered chemotherapy drugs administered on or after May 1, 2016. Medicaid reimbursement for chemotherapy drugs that are administered on or after May 1, 2016 shall be one hundred percent (100%) of the Medicare fee schedule. The reimbursement rates for physician administered chemotherapy drugs shall be posted on DHCF's website at [www.dc-medicaid.com](http://www.dc-medicaid.com) and updated annually.

**Subsection 995.5 is deleted in its entirety and amended to read as follows:**

995.5 All updates to the Medicaid fee schedule governing reimbursement rates for physician and specialty services shall comply with the requirements set forth under Section 988 (Medicaid Fee Schedule) of this chapter.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.