

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 (2014 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 Chapter 91, entitled “Medicaid Reimbursement for Adult Substance Abuse Rehabilitative Services,” of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Since the original implementation of the Adult Substance Abuse Rehabilitation Services (ASARS) program in the District, the responsibility for development and promulgation of inspection, monitoring, and certification standards of all substance use disorder (SUD) treatment and recovery providers in the District transitioned from the Department of Health to the Department of Behavioral Health (referred to in this Chapter as “DBH”). These emergency and proposed rules amend the previously published rules to: (1) identify DBH as having the authority to authorize and monitor Medicaid-reimbursable SUD services; (2) require providers of ASARS to comply with certification requirements set forth by DBH; and (3) require that providers be subject to administrative actions pursuant to Chapter 13 of Title 29 DCMR, and comply with screening and enrollment requirements pursuant to Chapter 94 of Title 29 DCMR, record retention, and audit and recoupment requirements.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of District residents with SUD by: 1) ensuring that care is maintained in SUD treatment facilities and by providers that serve vulnerable individuals that require Medicaid-reimbursable SUD treatment; and 2) ensuring a smooth transition for Medicaid beneficiaries receiving SUD treatment services in accordance with the new rules promulgated by DBH governing the delivery of SUD treatment in the District. On September 28, 2012, a Notice of Final Rulemaking was published in the *D.C. Register* at 59 DCR 11144. These rules amend the September 28, 2012 rulemaking consistent with the corresponding State Plan for Medicaid Assistance (State Plan) governing the delivery of Medicaid-reimbursable SUD treatment in the District. The State Plan amendment has been approved by the Council of the District of Columbia through the “Medicaid Adult Substance Abuse Rehabilitative Services State Plan Amendment Approval Resolution of 2015” on April 3, 2015, and the Centers for Medicare and Medicaid Services (CMS) on July 23, 2015.

The emergency rulemaking was adopted on April 28, 2016 and shall become effective for services rendered on or after that date. The emergency rules will remain in effect for one hundred and twenty (120) days, or until August 26, 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 91 of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety, and amended to read as follows:

**CHAPTER 91 MEDICAID REIMBURSEMENT FOR ADULT SUBSTANCE
 ABUSE REHABILITATIVE SERVICES**

9100 GENERAL PROVISIONS

9100.1 The purpose of this chapter is to establish requirements governing Medicaid reimbursement for Adult Substance Abuse Rehabilitative Services (ASARS).

9100.2 In order to be eligible for treatment in the ASARS program, beneficiaries shall be subject to the following:

- (1) Medicaid eligibility requirements set forth in Chapter 95 of Title 29 of the District of Columbia Municipal Regulations (DCMR); and
- (2) Substance Use Disorder (SUD) treatment eligibility factors set forth in § 6301 of Title 22-A DCMR.

9100.3 The Department of Behavioral Health (DBH) shall be responsible for establishing standards for determining each adult Medicaid beneficiary's eligibility for treatment under the ASARS program pursuant to the requirements set forth in Chapter 63 of Title 22-A DCMR.

9101 PROVIDER CERTIFICATION

9101.1 Each ASARS treatment provider shall be certified and comply with the certification requirements set forth by DBH pursuant to Chapter 63 of Title 22-A of the DCMR.

9102 PROVIDER SCREENING AND ENROLLMENT

9102.1 Prior to enrolling in Medicaid, each ASARS treatment provider shall first be certified by DBH in accordance with § 9101.1 of this chapter. Once certified, each ASARS treatment provider shall:

- (a) Be screened and enrolled in Medicaid pursuant to Chapter 94 of Title 29 DCMR in order to be eligible for reimbursement under the Medicaid program; and
- (b) Include proof of certification in the application for enrollment in Medicaid.

9103 ADMINISTRATIVE ACTIONS

9103.1 Each Medicaid-enrolled ASARS treatment provider shall be subject to the administrative actions set forth under Chapter 13 of Title 29 DCMR.

9104 REIMBURSEMENT

9104.1 ASARS shall be reimbursed according to a fee schedule rate for ASARS services included in an approved treatment plan, as described in Chapter 63 of Title 22-A DCMR. The fee schedule shall be published on the DHCF's website at www.dc-medicaid.com.

9105 RECORDS

9105.1 Each Medicaid-enrolled ASARS provider shall maintain beneficiary records and individual treatment plans in a manner that will render them amenable to audit and review by the U.S. Department of Health and Human Services, the Department of Health Care Finance (DHCF), DBH, and their authorized designees or agents.

9105.2 Each Medicaid-enrolled ASARS provider shall maintain, and make available complete financial records covering its operations upon request by the U.S. Department of Health and Human Services, DHCF, DBH and their authorized designees or agents.

9105.3 All required financial and treatment records and information shall be maintained in accordance with requirements set forth under Chapter 63 of Title 22-A DCMR.

9106 AUDITS AND REVIEWS

9106.1 This section sets forth the requirements for audits and reviews of ASARS services. DHCF shall perform regular audits of ASARS providers to ensure that Medicaid payments are consistent with efficiency, economy and quality of care, and made in accordance with federal and District conditions of payment. The audits shall be conducted at least annually and when necessary to investigate and maintain program integrity. DHCF may delegate the authority for audits and reviews described herein to DBH pursuant to a written memorandum of agreement. Any written memorandum of agreement shall require that DBH comply with the provisions of this section as DHCF's designee.

9106.2 DHCF shall perform routine audits of claims, by statistically valid scientific sampling, to determine the appropriateness of ASARS services rendered and billed to Medicaid to ensure that Medicaid payments can be substantiated by documentation that meets the requirements set forth in this rule, and made in accordance with federal and District rules governing Medicaid.

- 9106.3 If DHCF determines that claims are to be denied, DHCF shall recoup those monies erroneously paid to an ASARS provider for denied claims, following the period of Administrative Review as set forth in this rule.
- 9106.4 DHCF shall issue a Proposed Notice of Medicaid Overpayment Recovery (PNR) to the ASARS provider, which sets forth the reasons for the recoupment, the amount to be recouped, and the procedures and timeframes for requesting an Administrative Review of the PNR.
- 9106.5 The ASARS provider shall have thirty (30) calendar days from the date of the PNR to request an Administrative Review. The provider shall submit documentary evidence and/or written argument against the proposed action to DHCF in the request for an Administrative Review. If the provider fails to respond within thirty (30) calendar days, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNR), which shall include the procedures and timeframes for requesting an appeal.
- 9106.6 DHCF shall review the documentary evidence and/or written argument submitted by the ASARS provider against the proposed action described in the PNR. After this review, DHCF may cancel its proposed action, amend the reasons for the proposed recoupment and/or adjust the amount to be recouped. DHCF shall issue a FNR, which shall include the procedures and timeframes for requesting an appeal.
- 9106.7 Within fifteen (15) calendar days from date of the FNR, the ASARS provider may appeal the FNR by filing a written notice of appeal from the determination of recoupment with the Office of Administrative Hearings. The written notice requesting an appeal shall include a copy of the FNR, description of the item to be reviewed, the reason for review of the item, the relief requested, and any documentation in support of the relief requested.
- 9106.8 In lieu of the off-set of future Medicaid payments, the ASARS provider may choose to send a certified check made payable to the District of Columbia Treasurer in the amount of the funds to be recouped.
- 9106.9 Filing an appeal shall not stay any action to recover any overpayment.
- 9106.10 Each Medicaid-enrolled ASARS provider shall allow access during an onsite audit or review to DHCF, its designee, DBH, other authorized District of Columbia government officials, the Centers for Medicare and Medicaid Services (CMS), and representatives of the United States Department of Health and Human Services, to relevant records and program documentation.
- 9106.11 Each Medicaid-enrolled ASARS provider shall facilitate audits and reviews by maintaining the required records and by cooperating with the authorized personnel assigned to perform audits and reviews.

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 4th Street, NW, Suite 900, Washington D.C. 20001, via telephone at (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at 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.