

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (“DHCF”), pursuant to the authority set forth in An Act to enable the District of Columbia 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 5015 of Chapter 50 (Medicaid Reimbursements for Personal Care Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (“DCMR”).

These emergency and proposed rules amend the previously published standards governing reimbursement of providers of personal care services under the District of Columbia State Plan for Medical Assistance by increasing the rates for services rendered by a personal care aide (“PCA”) to comply with the Living Wage Act of 2006 (“Living Wage Act”), effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)). These rules increase the previous living wage rates by eight cents (8¢) per hour, or two cents (2¢) per fifteen (15) minute increment. This adjustment was made to comply with the Department of Employment Services’ recent increases to the living wage rate effective January 1, 2016. These rules also authorize DHCF to publish a notice in the *D.C. Register* of future changes to the reimbursement rate.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who are in need of personal care services. Based upon current reimbursement requirements, payments to home care providers are not adequate to ensure compliance with the Living Wage Act of 2006. By taking emergency action, this rule will ensure that providers of personal care services are compensated for providing personal care services in accordance with the Living Wage Act of 2006. Therefore, in order to ensure that the beneficiaries’ health, safety, and welfare are not threatened by the lapse of access to personal care services provided by qualified and equitably paid providers, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on December 31, 2015 and will become effective for services rendered beginning January 1, 2016. The emergency rules shall remain in effect for one hundred and twenty (120) days, or until April 29, 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 50, MEDICAID REIMBURSEMENT FOR PERSONAL CARE SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 5015, REIMBURSEMENT, is amended to read as follows:

5015 REIMBURSEMENT

- 5015.1 For dates of services beginning October 27, 2015 through December 31, 2015, each provider shall be reimbursed five dollars (\$5.00) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty five cents (\$3.45) per fifteen (15) minutes for services rendered by a personal care aid (PCA), shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 5015.2 For dates of services beginning January 1, 2016, each provider shall be reimbursed five dollars and two cents (\$5.02) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty six cents (\$3.46) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 5015.3 Subsequent changes to the reimbursement rate(s) shall be posted on the Medicaid fee schedule at www.dc-medicaid.com. DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s).
- 5015.4 Each Provider shall maintain adequate documentation substantiating the delivery of allowable services provided in accordance with the PCA service authorization and the beneficiary's plan of care for each unit of service submitted on every claim.
- 5015.5 Reimbursement for PCA services, when provided through the D.C. Medicaid program's State Plan PCA benefit, shall not exceed eight (8) hours per day, seven (7) days a week, and shall be limited to the amount, duration, and scope of services set forth in the PCA Service Authorization and the plan of care, as described in Section 5003.
- 5015.6 Claims for PCA services submitted by a Provider in any period during which the beneficiary is an in-patient at another health care facility including a hospital, nursing home, psychiatric facility or rehabilitation program shall be denied except on the day when a beneficiary is admitted or discharged.
- 5015.7 When a beneficiary is discharged from a health care facility to the beneficiary's home and requires PCA services on the date of discharge, the number of PCA hours on that day shall be authorized in accordance with the beneficiary's discharge plan.
- 5015.8 Claims for PCA service submitted by a Provider for any hour in which the beneficiary was receiving Adult Day Health Program (ADHP) services under the § 1915(i) State Plan Option, or other similar service in which PCA services are provided concurrently to the beneficiary shall be denied.

- 5015.9 If a beneficiary is also receiving ADHP services on the same day that PCA services are delivered, the combination of both PCA and ADHP services shall not exceed a total of twelve (12) hours per day.
- 5015.10 Each Provider shall agree to accept as payment in full the amount determined by DHCF as Medicaid reimbursement for the authorized services provided to beneficiaries. Providers shall not bill the beneficiary or any member of the beneficiary's family for PCA services.
- 5015.11 Each Provider shall agree to bill any and all known third-party payers prior to billing Medicaid.
- 5015.12 All reimbursable claims for PCA services shall include the National Provider Identification (NPI) numbers for the:
- (a) Provider;
 - (b) Physician or Advanced Practice Registered Nurse (APRN)who ordered the PCA services;
 - (c) The staffing agency, if applicable; and
 - (d) PCA who provided the PCA services, regardless of whether the PCA is an employee of the Provider or is from another staffing agency.
- 5015.13 Pursuant to 42 C.F.R. § 424.22(d), the Department shall deny PCA service claims or recoup paid claims when Provider records or other evidence indicate that the primary care physician or APRN ordering a beneficiary's treatment has a direct or indirect financial relationship, compensation, ownership or investment interest as defined in 42 C.F.R. § 411.354 in the Provider billing for the services, unless the financial relationship, compensation, ownership or investment interest meets an exception as defined in 42 C.F.R. § 411.355.
- 5015.14 Claims resulting from marketing by a staffing agency (including face-to-face solicitation at doctors' offices, home visits, requests for beneficiary Medicaid numbers, or otherwise directing beneficiaries to any Medicaid Provider) shall not be reimbursed.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, J.D. Senior Deputy Director/Medicaid Director, Department of Health Care Finance, 441 4th Street, North West, Suite 900, 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 emergency and proposed rule may be obtained from the above address.