

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance, 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. 744; D.C. Official Code §1-307.02 (2006 Repl.; & 2011 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) (2008 Repl.)), hereby gives notice of the adoption of an amendment to section 964 (Dental Services) of chapter 9 (Medicaid Program) of title 29 of the District of Columbia Municipal Regulations (DCMR).

These rules update the Medicaid dental program by aligning coverage with best practices and improving the regulatory framework. These rules also authorize a prior authorization policy for orthodontic services for children, allowing three avenues for care: (1) having a minimum score on the Handicapping Labiolingual Deviation (HLD) Index; (2) exhibiting one of six automatic qualifying conditions; or (3) otherwise exhibiting a medical need for orthodontia as established in a written narrative prepared by a qualified dental service provider. The proposed prior authorization policy is a hybrid of the HLD Index score used in Maryland (greater than or equal to 15) and additional factors used to approve dental services in other state Medicaid programs. The prior authorization policy for orthodontia will apply to both fee-for-service and managed care beneficiaries under the age of twenty-one (21).

The District of Columbia State Plan for Medical Assistance (State Plan) must be approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to reflect these changes. The State Plan was approved by the Council prior to submission to CMS. (*See* PR 19- 0386 entitled, "Medicaid Dental Program State Plan Amendment Approval Resolution of 2011").

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on August 19, 2011 (58 DCR 7566). No comments were received and no substantive changes have been made. The Director adopted these final rules on March 6, 2012. The August 19, 2011, notice included language indicating these rules would become effective for services rendered on or after August 13, 2011, if the corresponding State Plan amendment has been approved by CMS with an effective date of August 13, 2011, or the effective date established by CMS in its approval of the corresponding State Plan amendment, whichever is later. By letter dated December 21, 2011, CMS approved the State Plan amendment with an effective date of August 20, 2011. These rules shall become effective for services rendered on or after August 20, 2011.

Section 964 (DENTAL SERVICES) of chapter 9 (MEDICAID PROGRAM) of title 29 (PUBLIC WELFARE) of the DCMR is deleted in its entirety and amended to read as follows:

964 DENTAL SERVICES

- 964.1 Subject to requirements established in this section, the Department of Health Care Finance (DHCF) shall reimburse dental services provided to the following eligible populations:
- (a) Medicaid beneficiaries under the age of twenty-one (21);
 - (b) Medicaid beneficiaries residing in intermediate care facilities for persons with intellectual and developmental disabilities (ICF/IDD) or enrolled in the 1915(c) Home and Community Based Waiver for Persons with Developmental Disabilities; or
 - (c) Medicaid beneficiaries twenty-one (21) years and over who do not live in an institution.
- 964.2 Medicaid beneficiaries under the age of twenty-one (21) shall be eligible to receive medically necessary dental services as a required component of the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit.
- 964.3 Dental services for individuals under age twenty-one (21) shall be provided at intervals that meet reasonable standards of dental practice as determined by the DHCF after consultation with recognized dental organizations involved in child health.
- 964.4 Dental services for individuals under the age of twenty-one (21) shall include at a minimum, relief of pain and infections, restoration of teeth and maintenance of dental health.
- 964.5 Dental services shall not be limited to emergency services for EPSDT beneficiaries.
- 964.6 Medicaid beneficiaries under the age of twenty-one (21) shall be eligible to receive medically necessary orthodontic services subject to the requirements set forth in § 964.7.
- 964.7 Before delivering an orthodontic service, each provider shall request prior authorization. To be eligible for orthodontia services, the beneficiary's dental or orthodontia provider shall demonstrate that the beneficiary meets at least one (1) of the following criteria:

- (a) Has an adjusted score greater than or equal to fifteen (15) on the Handicapping Labio-Lingual Deviation (HLS) Index;
- (b) Exhibits one (1) or more of the following Automatic Qualifying Condition(s) that cause dysfunction due to a handicapping malocclusion and is supported by evidence in the beneficiary's treatment records:
 - (1) Cleft palate deformity;
 - (2) Cranio-facial anomaly;
 - (3) Deep impinging overbite;
 - (4) Crossbite of individual anterior teeth;
 - (5) Severe traumatic Deviation; or
 - (6) Overjet greater than nine millimeters (9 mm) or mandibular protrusion greater than three and one half millimeters (3.5 mm); or
- (c) Has otherwise established a medical need for orthodontic treatment that is supported by comprehensive dental records including, but not limited to:
 - (1) Upper and lower study models;
 - (2) Cephalometric head film with analysis;
 - (3) Panoramic or full series periapical radiographs;
 - (4) Extra oral and intra oral photographs;
 - (5) Clinical summary with diagnosis; and
 - (6) Treatment plan.

964.8

Providers of dental services, with the exception of providers for children's fluoride varnish shall be dentists or dental hygienists working under the supervision of a dentist, who meet the following requirements:

- (a) Provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C.

Official Code §§ 3-1201, *et seq.* (2007 Repl. & 2011 Supp.)); or consistent with the applicable professional practices act within the jurisdiction where services are provided; and

- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for dental services for the covered populations.
- 964.9 A dental provider, primary care physician, or pediatrician may administer preventive fluoride varnish treatment to children, unless expressly prohibited by the scope of practice in the state where the physician is licensed.
- 964.10 Reimbursement for dental services shall be made according to the District of Columbia Medicaid fee schedule available online at <http://www.dc-medicaid.com> and shall cover all services related to the procedure.
- 964.11 Medicaid beneficiaries residing in an ICF/IDD shall be eligible to receive medically necessary dental services.
- 964.12 Reimbursement for dental services provided to an ICF/IDD beneficiary shall be consistent with the District of Columbia Medicaid fee schedule for beneficiaries receiving dental services under the 1915 (c) Home and Community Based Waiver and available online at <http://www.dc-medicaid.com> and as described in 29 DCMR § 936.10.
- 964.13 Medicaid beneficiaries age twenty-one (21) years and over who do not live in an institution, shall be eligible to receive the following medically necessary dental services:
- (a) General preventive services, including semi-annual routine cleaning and oral hygiene instruction;
 - (b) Emergency, surgical and restorative services including root canal treatment, limited to two (2) molars per year;
 - (c) Denture reline and rebase, limited to two (2) over a five (5) year period unless additional services are prior authorized;
 - (d) Complete radiographic survey, including full, panoramic and bitewing x-rays, limited to one (1) per year unless additional services are prior authorized;
 - (e) Periodontal scaling and root planing where the case is classified within the criteria established by the American Academy of Periodontology;

- (f) Initial placement or replacement of a removal prosthesis where damage is due to circumstances beyond the beneficiary's control; and
- (g) Removable partial prosthesis, subject to a recipient meeting conditions specified in the billing manual.

964.14 Medicaid beneficiaries age twenty-one (21) years and over shall not be eligible to receive the following services:

- (a) Local anesthesia used in conjunction with surgical procedures and billed separately;
- (b) Hygiene aids, including tooth brushes and dental floss;
- (c) Cosmetic or aesthetic procedures;
- (d) Medication dispensed by a dentist that a beneficiary could obtain over-the-counter from a pharmacy;
- (e) Acid etch for a restoration that is billed separately;
- (f) Fixed prosthodontics (such as a bridge), unless prior authorized because a beneficiary cannot use a removable prosthesis or other procedures that are less cost effective;
- (g) Gold restoration, inlay, or onlay, including cast non-precious and semiprecious metals;
- (h) Duplicative x-rays;
- (i) Space maintainers;
- (j) Denture replacement when reline or rebase would correct the problem;
- (k) Prosthesis cleaning; and
- (l) Removable unilateral partial dentures that are one-piece cast metal including clasps and teeth.

964.15 Any dental service for a beneficiary age twenty-one (21) years or older that does not live in an institution and requires inpatient hospitalization or general anesthesia shall be prior authorized by DHCF.

964.16 **Definitions.** For purposes of this section, the following terms shall have the meanings ascribed:

Beneficiary – An individual who is eligible to receive dental services under DHCF programs, including Medicaid fee-for-service, managed care, and waivers.

Dental Hygienist – A person who is licensed as a dental hygienist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.* (2007 Repl. & 2011 Supp.)) or licensed as a dental hygienist in the jurisdiction where the services are provided.

Dentist – A person who is licensed as a dentist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.* (2007 Repl. & 2011 Supp.)) or licensed as a dentist in the jurisdiction where the services are provided.

Treatment Plan – A written plan that includes diagnostic findings and treatment recommendations resulting from a comprehensive evaluation of the dental health needs of a beneficiary with a developmental disability.