DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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.744; Pub. L. 90-227, D.C. Official Code § 1-307.02 (2012 Repl. & 2013 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 65 (Medicaid Reimbursement to Nursing Facilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Pursuant to Section 6508, entitled "Final Per Diem Rate Calculation", each nursing facility located in the District of Columbia participating in the Medicaid program is reimbursed on a prospective basis, at a facility-specific per diem rate. This rate is calculated by establishing a base year per diem rate for each facility, adjusted semi-annually for case-mix, adjusted annually for inflation, and subject to other adjustments. Effective January 1, 2011, an amendment to the State Plan eliminated the annual inflation adjustment in order to create budget savings.

DHCF has submitted a State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) that, if approved, will reinstate the annual inflation adjustment for nursing facility per diem rates; this amendment includes minor clarifications of the formula for calculating the annual inflation adjustment from January 1, 2006 to the present, to reflect actual accounting practices. Preceding the State Plan submission, the amendment was approved by the Council of the District of Columbia through the Medical Assistance Program Emergency Amendment Act of 2013, signed July 30, 2013 (D.C. Act 20-130; 60 DCR 11384). Since the amendment is still under review by CMS, a second emergency and proposed rulemaking is required to maintain the preservation of health, welfare and safety of District residents under the care of nursing facilities that continue to provide safe and appropriate health care services to District Medicaid beneficiaries. The estimated federal impact for fiscal year 2014 will be $3.209 million. For fiscal year 2015, the estimated federal impact will be $3.263 million.

A Notice of Emergency and Proposed Rulemaking was published on September 27, 2013 at 60 DCR 013421. No comments were received and no substantive changes have been made. The second emergency and proposed rulemaking was adopted on January 10, 2014 and became effective on that date. The emergency rule will remain in effect for one hundred and twenty (120) days or until May 9, 2014, 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 these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Section 6508 (FINAL PER DIEM RATE CALCULATION) of Chapter 65 (MEDICAID REIMBURSEMENT TO NURSING FACILITIES) of Title 29 (PUBLIC WELFARE) of the DCMR is amended by amending Subsection 6508.1 to read as follows:

6508.1 Each nursing facility's per diem rate effective January 1, 2006 shall be the sum of subparagraphs (a), (b), and (c) as set forth below:

(a) The nursing and resident care base year cost per diem, which shall be calculated as follows:

(1) Effective January 1, 2006, through September 30, 2007, the nursing and resident care base year cost per diem established pursuant to Section 6505, adjusted for inflation to March 30, 2003, using the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (CMS Index).

(2) Effective October 1, 2007, through September 30, 2008, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(1), adjusted for inflation using the CMS Index for District Fiscal Years 2006, 2007, and 2008.

(3) Effective October 1, 2008, through September 30, 2009, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(2), adjusted for inflation using the CMS Index.

(4) Effective October 1, 2009 through December 31, 2010, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(3), adjusted for inflation using the CMS Index.

(5) Effective January 1, 2011 through September 30, 2013, the annual inflation adjustment shall be eliminated.

(6) Effective October 1, 2013, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(4), shall be annually adjusted for inflation using the CMS Index. This inflation adjustment shall not apply or be calculated for the period in which the inflation adjustment was eliminated in Subsection 6508.1(a)(5).

(b) The routine and support base year cost per diem, which shall be calculated as follows:

(1) Effective January 1, 2006, through September 30, 2007, the routine and support base year per diem established pursuant to Section 6506, adjusted for inflation to March 30, 2003, using the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (CMS Index).

(2) Effective October 1, 2007, through September 30, 2008, the routine and support base year cost per diem calculated pursuant to Subsection 6508.1(b)(1), indexed for inflation using the CMS Index.

(3) Effective October 1, 2008, through September 30, 2009, the routine and support base year cost per diem calculated pursuant to Subsection 6508.1(b)(2), adjusted for inflation using the CMS Index.

(4) Effective October 1, 2009 through December 2010, the routine and support base year cost per diem calculated according to Subsection 6508.1(b)(3), adjusted for inflation using the CMS Index.

(5) Effective January 2011 through September 30, 2013, the annual inflation adjustment is eliminated.

(6) Effective October 1, 2013, the routine and support base year cost per diem calculated pursuant to Subsection 6508.1(b)(4), shall be annually adjusted for inflation using the CMS Index. This inflation adjustment shall not apply or be calculated for the period in which the inflation adjustment was eliminated in Subsection 6508.1(b)(5).

(c) The capital-related base year cost per diem, which shall be calculated as follows:

(1) Effective January 1, 2006, through September 30, 2007, the capital-related base year cost per diem established pursuant to Section 6507 adjusted for inflation to March 30, 2003, using the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (CMS Index). The inflation adjustment in this subparagraph shall not be applied to depreciation, amortization, and interest on capital related expenditures.

(2) Effective October 1, 2007, through September 30, 2008, the capital-related base year cost per diem calculated pursuant to Subsection 6508.1(c)(1) adjusted for inflation using the CMS Index for District Fiscal Years 2006, 2007, and 2008. The inflation adjustment in this subparagraph shall not be applied to depreciation, amortization and interest on capital related expenditures.

(3) Effective October 1, 2008, through September 30, 2009, the capital-related base year cost per diem calculated pursuant to

Subsection 6508.1(c)(2) adjusted for inflation using the CMS Index. The inflation adjustment in this subsection shall not be applied to depreciation, amortization and interest on capital related expenditures.

(4) Effective October 1, 2009 through December 31, 2010, the capital-related base year cost per diem calculated pursuant to Subsection 6508.1(c)(3) adjusted for inflation using the CMS Index. The inflation adjustment in this subsection shall not be applied to depreciation, amortization and interest on capital-related expenditures.

(5) Effective January 2011 through September 30, 2013, the annual inflation adjustment is eliminated.

(6) Effective October 1, 2013, the capital-related base year cost per diem calculated pursuant to Subsection 6508.1(c)(4), shall be annually adjusted for inflation using the CMS Index. This inflation adjustment shall not apply or be calculated for the period in which the inflation adjustment was eliminated in Subsection 6508.1(c)(5). The inflation adjustment in this subsection shall not be applied to depreciation, amortization and interest on capital-related expenditures.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone at (202) 442-9115, via e-mail 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.