

DEPARTMENT OF HEALTH CARE FINANCE**NOTICE OF 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; D.C. Official Code § 1-307.02 (2014 Repl.)) 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 intent to amend Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR) by adopting a new Section 991, entitled "Other Laboratory and X-Ray Services."

District of Columbia Medicaid beneficiaries are entitled to a set of mandatory benefits under federal law. One of these benefits is Laboratory and X-Ray Services. Federal law requires that all Medicaid programs provide services that are sufficient in amount, duration and scope to reasonably achieve their purpose. These proposed rules will clarify coverage limitations for other laboratory and x-ray services.

The proposed rulemaking correlates to an amendment to the District of Columbia State Plan for Medical Assistance which requires approval by the Council of the District of Columbia (Council) and the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services (HHS). After approval by the Council, the SPA will be submitted to CMS for review and approval. Implementation of this proposed rule is contingent upon CMS approval of the corresponding SPA.

The Director also gives notice of the intent to take final rulemaking action to adopt these rules 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:

A new Section 991, OTHER LABORATORY AND X-RAY SERVICES, is added to read as follows:

991 OTHER LABORATORY AND X-RAY SERVICES

991.1 Medicaid reimbursable other laboratory and x-ray services shall be professional and technical laboratory and radiological services that are:

- (a) Medically necessary;
- (b) Ordered, in writing, by a physician or advanced practice registered nurse (APRN) practicing under the supervision of a physician who is screened

and enrolled as a District Medicaid program provider pursuant to 29 DCMR §§ 9400 *et seq.*; and

- (c) Provided in an office or similar facility other than a hospital outpatient department or clinic.

991.2 All ordering clinicians shall be licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 *et seq.*)

991.3 Coverage of and Medicaid reimbursement for other laboratory and x-ray services shall be limited as follows:

- (a) Other laboratory and x-ray services performed in connection with a routine physical examination shall not be billed separately;
- (b) Services primarily for, or in connection with, cosmetic purposes shall require prior approval by the Department of Health Care Finance or its designee;
- (c) Services primarily for, or in connection with, dental or oral surgery services, shall be limited to those required as a result of the emergency repair or accidental injury to the jaw or related structure; and
- (d) Other laboratory and x-ray services provided to an individual who is in an outpatient setting, including services referred to an outside office or facility shall be included in a hospital outpatient claim.

991.4 To receive Medicaid reimbursement, a provider of other laboratory services shall meet the following requirements:

- (a) Be certified under Title XVIII of the Social Security Act and the Clinical Laboratories Improvement Amendments of 1988;
- (b) Be licensed or registered in accordance with D.C. Official Code § 44-202;
- (c) Hold an approved District Medicaid program Provider Agreement as an independent laboratory provider; and
- (d) Be screened and enrolled as a District Medicaid provider pursuant to 29 DCMR § 9400.

991.5 To receive Medicaid reimbursement, a provider of x-ray services shall be:

- (a) Licensed or registered in accordance with D.C. Official Code § 44-202 and other applicable District of Columbia laws;
- (b) In compliance with manufacturer's guidelines for use and routine inspection of equipment; and
- (c) Screened and enrolled as a District Medicaid provider pursuant to 29 DCMR § 9400.

991.6 Medicaid reimbursement rates for other laboratory or x-ray services shall not exceed eighty percent (80%) of the rates established by Medicare, where applicable, for each service.

991.7 The Department of Health Care Finance shall publish Medicaid reimbursement rates for other laboratory or x-ray services on the District Medicaid fee schedule, available online at www.dc-medicaid.com.

991.99 DEFINITIONS

For purposes of this section, the following terms shall have the meanings ascribed.

Outpatient - A patient of an organized medical facility, or distinct part of that facility who is expected by the facility to receive and who does receive professional services for less than a twenty-four (24) hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight in accordance with the requirements set forth in 42 C.F.R. § 440.2.

Professional service - A service that may only be provided by a physician or Advanced Practice Registered Nurse who is qualified to analyze a procedure or service and providing a written report of findings.

Technical services - Services necessary to secure a specimen and prepare it for analysis, or to take an x-ray and prepare it for reading and interpretation, *e.g.*, machines test, laboratory, and radiology procedures.

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