

## DEPARTMENT OF HEALTH CARE FINANCE

### NOTICE OF FINAL 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 (2016 Repl. & 2019 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) (2018 Repl.)), hereby gives notice of the adoption of an amendment to Section 910 (Medicaid-Reimbursable Telemedicine Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This rule finalizes changes to the standards governing Medicaid reimbursement of health services provided via telemedicine to allow the District to ensure the continued access of services after the expiration of the Mayor's public health emergency (PHE) declaration (Mayor's Order 2021-096) for Medicaid beneficiaries that receive telemedicine services through audio-only communication methods and/or consent to telemedicine services verbally. DHCF is adding audio-only communication as an allowable method of telemedicine services because audio-only communication provides a service delivery pathway that will help ensure beneficiaries continue to receive health services even if they are unable to access traditional in-person Medicaid services or telemedicine services through video-audio communication methods. Additionally, DHCF is allowing beneficiaries to provide verbal consent to telemedicine services if the provider appropriately documents the verbal consent. Finally, DHCF is clarifying the telemedicine technology requirements applicable to audio-only communication and video-audio communication methods.

To this end, the rule finalizes four (4) specific amendments: (1) the addition of audio-only communication as an allowable method of telemedicine in Subsection 910.2; (2) the addition of verbal consent as an allowable method for a beneficiary to consent to telemedicine services in Subsection 910.5; (3) a clarification in Subsection 910.6 that providers must maintain appropriate documentation to demonstrate that a beneficiary has consented to telemedicine services; and (4) a clarification in Subsection 910.13 of the telemedicine services technology requirements applicable to audio-only communication and video-audio communication methods.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 27, 2021 at 68 DCR 008960. No comments were received and DHCF made one technical change to Subsection 910.6(d) to provide clarity on the applicability of DHCF telemedicine guidance published on the DHCF website.

The Director adopted these rules as final on October 28, 2021 and they shall become effective on the date of publication of this rulemaking in the *District of Columbia Register*.

**Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 910, MEDICAID-REIMBURSABLE TELEMEDICINE SERVICES, is amended as follows:**

**Subsection 910.2 is amended to read as follows:**

910.2 Telemedicine is a service delivery model that delivers healthcare services as set forth in Subsections 910.10 and 910.11 through a two-way, real time interactive video-audio communication or audio-only communication for the purpose of evaluation, diagnosis, consultation, or treatment.

**Subsection 910.5 is amended to read as follows:**

910.5 To be eligible for Medicaid reimbursement of telemedicine services under these rules, a Medicaid beneficiary shall meet the following criteria:

- (a) Be enrolled in the District of Columbia Medicaid program pursuant to Chapter 95 (Medicaid Eligibility) of Title 29 of the District of Columbia Municipal Regulations;
- (b) Be physically present at the originating site at the time the telemedicine service is rendered; and
- (c) Provide written or verbal consent to receive telemedicine services in lieu of in-person healthcare services, consistent with all applicable District laws and subsection 910.6.

**Subsection 910.6 is amended to read as follows:**

910.6 A telemedicine provider shall meet the following program requirements:

- (a) Be enrolled as a Medicaid Provider and comply with all the requirements set forth under Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR including having a completed, signed, Medicaid Provider Agreement;
- (b) Comply with all technical, programmatic and reporting requirements as set forth in this section;
- (c) Be licensed in accordance with Subsection 910.9;
- (d) Appropriately document, pursuant to guidance published on the DHCF website at [www.dhcf.dc.gov](http://www.dhcf.dc.gov), the beneficiary's written or verbal consent described in Subsection 910.5; and
- (e) Comply with any other applicable consent requirements under District laws, including but not limited to Section 3026 of Title 5-E of the District of

Columbia Municipal Regulations if providing telemedicine services at a District of Columbia Public School (DCPS) or District of Columbia Public Charter School (DCPCS).

**Subsection 910.13 is amended to read as follows:**

910.13 A telemedicine provider shall comply with the following technology requirements:

- (a) A telemedicine provider that utilizes audio-only communication methods shall use audio equipment that ensures clear communication and includes echo cancellation.
- (b) A telemedicine provider that utilizes video-audio communication methods shall:
  - (1) Use a camera that has the ability to, either manually or by remote control, provide multiple views of a patient and has the capability of altering the camera's resolution, and focus as needed during the consultation;
  - (2) Use audio equipment that ensures clear communication and includes echo cancellation;
  - (3) Ensure internet bandwidth speeds sufficient to provide quality video to meet or exceed fifteen (15) frames per second;
  - (4) Use a display monitor size sufficient to support diagnostic needs used in the telemedicine services; and
  - (5) Use video and audio transmission equipment with less than a three hundred (300) millisecond delay.