

## 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. 744; D.C. Official Code § 1-307.02 (2016 Supp. & 2018 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) (2018 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 97 (Adult Day Health Program Services), of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules establish standards for adult day program services that govern eligibility criteria for beneficiaries, conditions of participation for providers, and provider reimbursement. Adult day health services are designed to encourage older adults to live in the community by offering non-residential medical supports; provide supervised therapeutic activities in an integrated community setting that foster opportunities for community inclusion; and deter more costly facility-based care. This rulemaking corresponds to an amendment to the District of Columbia State Plan for Medical Assistance (State Plan). The corresponding amendment to the State Plan Amendment must be approved by Centers for Medicare and Medicaid (CMS).

This emergency and proposed rule gives notice of the DHCF's intent to renew the 1915(i) Adult Day Health Program (ADHP), effective April 1, 2020, and incorporates changes to the the program consistent with federal requirements and updates made to the 1915(i) State Plan Home and Community-Based Services (HCBS) template, issued CMS. DHCF expects total Medicaid expenditures to increase by \$6,401,470 in Fiscal Year 2020 as a result of the proposed changes.

DHCF is proposing amendments to Section 9701, governing eligibility requirements, to clarify eligibility requirements set forth under the State Plan with respect to a beneficiary's indication of need for services. In accordance with 42 CFR 441.710(c) and 441.720(a)(5), individuals are considered enrolled in the State Plan HCBS benefit only if they (1) meet the eligibility and needs-based criteria for the benefit, and are (2) also assessed to require and receive at least one home and community-based service offered under the State Plan for medical assistance, at a frequency determined by the state. The current regulations lacked specificity with regard to the frequency at which a beneficiary must be assessed to be eligible for enrollment in the ADHP program. DHCF is proposing amendments under § 9701.1(e) to clarify this program eligibility requirement. An individual must require the provision of at least one 1915(i) ADHP service, as documented in the person-centered service plan, on a monthly-basis, to be eligible for enrollment into the 1915(i) ADHP.

Additionally, DHCF is proposing amendments to Section 9721, governing service limitations, to eliminate the cap on hours for individuals receiving Personal Care Aide (PCA) services under the State Plan on the same day as the individual receives ADHP services. The service limitation was creating barriers for Medicaid beneficiaries who needed both services in a single day. The

limitation also posed challenges for providers with regard to billing for the concurrent provision of PCA and ADHP services. For these reasons, DHCF is removing the limitation.

Finally, DHCF is proposing amendments to Section 9723, governing reimbursement policy, to reflect that, effective April 1, 2020, ADHP services shall be reimbursed in accordance with the District of Columbia Medicaid Fee Schedule.

DHCF is also considering whether additional policy changes are needed to improve the accessibility of ADHP services for individuals who are homebound. DHCF invites interested stakeholders to provide information on any policy changes that might support this goal for consideration as part of their comments.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare to ensure that the District’s Adult Day Health program delivering critically important healthcare services to vulnerable District Medicaid beneficiaries in need of home and community-based services without interruption.

These emergency rules were adopted on February 28, 2020 and shall become effective on April 1, 2020, contingent upon approval of the corresponding SPA by CMS. The emergency rules will remain in effect for one hundred and twenty (120) days or until June 27, 2020, 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 this emergency and proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 97, ADULT DAY HEALTH PROGRAM SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 9701, ELIGIBILITY REQUIREMENTS, is amended to read as follows:**

**9701 ELIGIBILITY REQUIREMENTS**

9701.1 To qualify for ADHP services under these rules, the Medicaid beneficiary shall meet the following criteria:

- (a) Be age fifty-five (55) and older;
- (b) Be an adult with a chronic medical condition diagnosed by a physician;
- (c) Have income up to one hundred fifty percent (150%) of the federal poverty level (FPL);
- (d) Be in receipt of an assessment determination authorizing, and specifying the level of need for ADHP services in accordance with Section 9709 of this chapter; and

- (e) Require provision of at least one (1) ADHP service on a monthly basis, as reflected in the beneficiary's assessment documentation described in Subsection 9709.3(d).

**Section 9721, SERVICE LIMITATIONS, is amended to read as follows:**

**9721 SERVICE LIMITATIONS**

- 9721.1 A person shall not receive ADHP services if they reside in an institutional setting or any setting that is not in compliance with the HCBS setting requirements consistent with 42 CFR § 441.301 and 42 CFR § 441.710.
- 9721.2 A provider shall not be reimbursed for ADHP services under these rules if the participant is concurrently receiving the following services:
- (a) Day Habilitation and Individualized Day Supports under the Section 1915 (c) Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD);
  - (b) Intensive day treatment or day treatment mental health rehabilitative services (MHRS);
  - (c) Personal Care Aide (PCA) services (State Plan and 1915 (c) waivers); or
  - (d) Adult day care or day services funded by the Older Americans Act of 1965, approved July 14, 1965 (Pub. L. No. 89-73, 79 Stat. 218), as amended by the Older Americans Act Amendments of 2000, approved November 13, 2000 (Pub. L. No. 106-501, 114 Stat. 2226), as amended by the Older Americans Act Amendments of 2006, approved October 17, 2006 (Pub. L. No. 109-365, 120 Stat. 2522).
- 9721.3 DHCF shall not reimburse ADHP services if the participant is also receiving or being billed for the services listed under Subsection 9721.2 at the same time the participant is in attendance at the ADHP site.
- 9721.4 A provider shall not be reimbursed for ADHP services if the participant is receiving intensive day treatment mental health rehabilitation services during a twenty-four (24) period that immediately precedes or follows the receipt of ADHP services, to ensure that the participant is receiving services in the setting most appropriate to his/her clinical needs.
- 9721.5 ADHP services shall not be provided for more than five (5) days per week and for more than eight (8) hours per day.

Section 9723, REIMBURSEMENT POLICY, is amended to read as follows:

**9723 REIMBURSEMENT POLICY**

- 9723.1 Reimbursement rates shall be based on a uniform per diem rate that is differentiated based on the participant's acuity level as established by the standardized need- based assessment tool and process described under Section 9709, as follows:
- (a) Acuity Level One (1) represents the health and support needs of a beneficiary whose needs based assessment reflects a minimum score of four (4); and
  - (b) Acuity Level Two (2) represents the health and support needs of a beneficiary whose needs based assessment reflects a score of six (6) or higher.
- 9723.2 Beginning April 1, 2020, the reimbursement rate for ADHP services shall be as follows:
- (a) Acuity Level One (1): The daily rate for a program serving participants with minimum acuity levels with at least one staff member during all hours shall be reimbursed in accordance with the District of Columbia Medicaid Fee Schedule schedule available online at [www.dc-medicaid.com](http://www.dc-medicaid.com); and
  - (b) Acuity Level Two (2): The daily rate for a program serving participants with a maximum acuity level with at least one staff member shall be reimbursed in accordance with the District of Columbia Medicaid Fee Schedule schedule available online at [www.dc-medicaid.com](http://www.dc-medicaid.com).
- 9723.3 DHCF may make periodic adjustments to the uniform per-diem rates. Uniform per-diem rates may be inflated by the corresponding CMS Market Basket Index for Nursing Facilities for that period.
- 9723.4 All future updates to the reimbursement rates for ADHP services shall comply with the public notice requirements set forth under § 988.4 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR) and provide an opportunity for meaningful comment.
- 9723.5 A public notice of ADHP rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of the change, and shall include a link to the Medicaid fee schedule and information on how written comments can be submitted to DHCF.

Comments on these rules should be submitted in writing to Melisa Byrd, Senior Deputy and Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, N.W., Suite 900, Washington D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.