

## 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. 774; D.C. Official Code §1-307.02 (2006 Repl; 2012 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 Supp.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to chapter 7 of title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Medicaid Day Treatment Programs."

Medicaid day treatment programs, as defined in these rules, are nonresidential programs operated for the purpose of providing medically supervised day treatment services for elderly persons, children from birth through age three (3), adults with a developmental disability, and adults with mental disorders. Services may include therapeutic activities, occupational, physical and speech therapy, nutrition services and specialized services for individuals with intellectual and mental disabilities.

Pursuant to a directive from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), DHCF is in the process of repealing the Medicaid day treatment rule and shutting down all existing fee-for-service day treatment services authorized pursuant to chapter 7 of title 29 of the DCMR. DHCF is in the process of transitioning current day treatment beneficiaries to existing alternative services and developing new State Plan Amendments for new service delivery models to address unmet needs. As part of its commitment to CMS, DHCF is required to cease enrolling new beneficiaries into existing Medicaid fee-for-service day treatment programs immediately. These emergency and proposed rules will authorize DHCF, effective January 1, 2013, to cease enrollment of new beneficiaries into day treatment programs authorized pursuant to chapter 7 of title 29 of the DCMR.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid beneficiaries who are currently receiving Medicaid-funded services. CMS has informed the District that it must take action to repeal the existing day treatment program rules and amend its State Plan to conform to the requirements of title XIX of the Social Security Act no later than March 31, 2013. As an interim step, the District immediately must cease enrollment in fee-for-service day treatment to satisfy commitments made to CMS that will bring the District into compliance with the federal Medicaid Program. If the District fails to do so, the District faces enforcement action that could result in significant disallowances for day treatment program claims paid under these rules. If the District were to incur such disallowances, DHCF would be forced to identify budget savings that could result in reducing services to current Medicaid beneficiaries.

The emergency rulemaking was adopted on November 27, 2012, and will become effective on January 1, 2013. The emergency rules will remain in effect for one hundred and twenty (120) days or until March 26, 2013, 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*.

Chapter 7 (Medicaid Day Treatment Programs) of title 29 (Public Welfare) of the DCMR is amended to read as follows:

**Section 712 (Admission Procedures) is amended by adding a new section 712.7 to read as follows:**

712.7 Effective January 1, 2013, no provider shall accept a new admission to a day treatment program authorized pursuant to this chapter.

**Section 714 (Special Admission Requirements for Mentally Retarded Persons) is amended by adding a new section 714.8 to read as follows:**

714.8 Effective January 1, 2013, no provider shall accept a new admission to a day treatment program authorized pursuant to this chapter.

**Section 718 (Reimbursement Policy) is amended by adding a new section 718.8 to read as follows:**

718.8 All claims submitted to DHCF for day treatment services rendered to any new admission admitted to a day treatment program as described in section 712 and 714 on or after January 1, 2013 shall be denied.

**SECTION 799 (Definitions) is amended by adding a new definition to read as follows:**

New Admission --an individual is a new admission, on or after January 1, 2013, if that individual did not receive day treatment services between October 1, 2012 and December 31, 2012 from any day treatment provider under these rules. An individual who changes from one day treatment provider to another, on or after January 1, 2013, shall also be deemed a new admission under this rule.

Comments on this rule should be submitted in writing to Linda Elam, Ph.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 899 North Capitol Street, NE, 6<sup>th</sup> Floor, Washington, DC 20002, via telephone on (202) 442-9115, 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 this rule are available from the above address.