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 (2012 Repl. & 2015 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 intent to adopt an amendment to Section 964 (Dental Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules update the parameters of the Medicaid dental program by aligning coverage with best practices and improving the regulatory framework for adults and children. Delivery of dental services is based on medical appropriateness, allowing the agency to maintain a dental program that meets the needs of all qualified Medicaid beneficiaries. These rules clarify the services available to each covered population, as well as the criteria that must be met and the documentation that must be provided in order to obtain prior authorization for certain covered services.

The corresponding State Plan Amendment (SPA) to the District of Columbia State Plan for Medical Assistance (State Plan) must be approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) and the Council of the District of Columbia. This rule is contingent upon approval of the corresponding SPA by CMS. If the corresponding SPA is approved, DHCF will publish a notice setting forth the effective date.

The Director also gives notice of the intent to take final rulemaking action to adopt this proposed rule 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:

Section 964, DENTAL SERVICES, is deleted in its entirety and replaced to read as follows:

964 DENTAL SERVICES

964.1 Subject to requirements established in this section, the Department of Health Care Finance (DHCF) shall reimburse for dental services, as further described in these rules, provided to the following eligible populations:

(a) Medicaid beneficiaries under the age of twenty-one (21);

(b) Medicaid beneficiaries twenty-one (21) years of age and older who reside in an intermediate care facility for individuals with intellectual disabilities

(ICF/IID) or are enrolled in the 1915(c) Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities, as described in 29 DCMR §§ 1900 *et seq.*; and

(c) Medicaid beneficiaries twenty-one (21) years of age and older who do not reside in an ICF/IID and are not enrolled in the 1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities.

964.2 Medicaid reimbursement shall be provided for dental services furnished to Medicaid beneficiaries, in a dental facility, under the direction of a dentist who meets the requirements of § 964.8.

964.3 Medicaid beneficiaries under the age of twenty-one (21) shall be eligible to receive dental services as a required component of the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit.

964.4 Medicaid reimbursement for dental services provided under the EPSDT benefit to Medicaid beneficiaries under the age of twenty-one (21) shall include those services provided:

(a) At intervals that meet reasonable standards of dental practice as determined by DHCF after consultation with recognized dental organizations involved in child health;

(b) At such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(c) Which include, at a minimum, preventive services; relief of pain and infections; restoration of teeth; and maintenance of dental health.

964.5 Medicaid beneficiaries under the age of eighteen (18) shall not be eligible to receive dental implants without prior authorization from DHCF or its agent.

964.6 Medicaid beneficiaries under the age of twenty-one (21) shall be eligible to receive orthodontic services subject to the requirements set forth in § 964.7.

964.7 Before delivering an orthodontic service to a Medicaid beneficiary under the age of twenty-one (21), a provider shall obtain prior authorization from DHCF or its agent. To be eligible for reimbursement of orthodontic services, the beneficiary's dental or orthodontia provider shall demonstrate that the beneficiary meets at least one (1) of the following criteria:

(a) Has an adjusted score greater than or equal to fifteen (15) on the Handicapping Labio-Lingual Deviation (HLD) Index;

(b) Exhibits one (1) or more of the following Automatic Qualifying Conditions that causes dysfunction due to a handicapping malocclusion and is supported by evidence in the beneficiary's treatment records:

(1) Cleft palate deformity;

(2) Cranio-facial anomaly;

(3) Deep impinging overbite causing the destruction of soft tissues of the palate where tissue laceration and/or clinical attachment loss are present;

(4) Crossbite of individual anterior teeth causing clinical attachment loss where recession of the gingival margins is present;

(5) Severe traumatic deviation; or

(6) Overjet greater than nine (9) millimeters or mandibular protrusion greater than three and one half (3.5) millimeters; or

(c) Has otherwise established a medical need for orthodontic treatment by demonstrating two (2) or more of the conditions below and justified the need in an accompanying narrative prepared by the ordering or referring dentist, orthodontist, primary care physician, speech pathologist, or behavioral health provider:

(1) A speech pathology that has proven non-responsive to medical treatment without orthodontic treatment, which has been diagnosed by a licensed speech therapist;

(2) Dysfunctional masticatory capacity as a result of the existing relationship between the maxillary and mandibular arches;

(3) Significant facial asymmetry;

(4) Severe maxillary, mandibular, or bi-maxillary protrusion or other physical deviation; or

(5) Other conditions that affect the medical, social, or emotional function of the patient as demonstrated by objective evidence provided by the patient's primary care physician or behavioral health provider.

964.8 In order to be reimbursed by Medicaid, providers of dental services, with the exception of children's fluoride varnish treatments, shall be dentists or dental

hygienists working under the supervision of a dentist, who meet the following requirements:

(a) Provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2012 Repl. & 2015 Supp.)), or consistent with the applicable professional practices act within the jurisdiction where services are provided; and

(b) Have a current District of Columbia (District) Medicaid Provider Agreement that authorizes the provider to bill for dental services for the covered populations.

964.9 A primary care physician or pediatrician may administer, and receive Medicaid reimbursement for providing, preventive fluoride varnish treatment to children, unless expressly prohibited by the scope of practice in the state where the physician is licensed.

964.10 In order to be reimbursed by Medicaid, any dental service provided to a Medicaid beneficiary twenty-one (21) years of age or older that requires inpatient hospitalization or general anesthesia shall be prior authorized by DHCF or its agent.

964.11 Medicaid beneficiaries twenty-one (21) years of age and over shall be eligible to receive, the following dental services:

(a) General dental examinations consisting of preventive services, which include routine cleaning and oral hygiene instruction every six (6) months;

(b) Emergency, surgical, and restorative services including crowns and root canal treatment;

(c) Denture reline and rebase, limited to one (1) over a five (5) year period unless additional services are prior authorized;

(d) Complete radiographic survey, including full mouth series, bitewing and panoramic x-rays, limited to one (1) every three (3) years unless additional services are prior authorized;

(e) Periodontal scaling and root planing, provided that the following criteria are met:

(1) Evidence of bone loss must be present on the current radiographs, full mouth x-ray series or bitewing x-rays to support the diagnosis of periodontitis;

(2) There must be current periodontal charting with six (6) point measurements and mobility noted, including the presence of pathology and periodontal prognosis;

(3) The pocket depths must be greater than four (4) millimeters; and

(4) The classification of the periodontology case type must be in accordance with guidelines established by the American Academy of Periodontology, available at: https://www.cda-adc.ca/jadc/vol-66/issue-11/594.pdf (last accessed February 9, 2016).

(f) Initial placement of a removable prosthesis, limited to one (1) per arch every five (5) years per beneficiary unless prior authorized; and

(g) Dental implants, only if prior authorized and provided that the following criteria are met:

(1) The requested dental implants are for the replacement of permanent teeth;

(2) Any active periodontal disease must be treated and under control prior to requesting dental implants;

(3) Existing teeth with caries and endodontic lesions must be treated prior to requesting dental implants; and

(4) The tooth or teeth to be replaced must have an opposing occlusion.

964.12 Four (4) dental implants for the maxillary arch and two (2) dental implants for the mandibular arch shall be authorized for a completely edentulous beneficiary.

964.13 When teeth adjacent to the site of requested dental implants require crowns or demonstrate significant disease or injury, and/or there are multiple missing teeth, more conservative treatment shall be considered as an alternative to dental implants to treat the condition and replace all missing teeth.

964.14 A provider shall submit the following written documentation with a prior authorization request for the replacement of a removable prosthesis:

(a) A letter from the beneficiary to the provider describing the reason for the denture replacement request, which includes the beneficiary's D.C.

Medicaid number, date, home address, telephone number, and signature; and

(b) For beneficiaries who attest that a denture no longer fits due to a significant medical condition, the request shall include a letter from the beneficiary's physician or surgeon documenting the medical condition and a letter from the beneficiary's dentist stating that the existing denture cannot be made functional by adjusting, relining, or rebasing it.

964.15 The following documentation shall be submitted with a prior authorization request for dental implants:

(a) Clinical justification for the dental implants, including the reasons conventional removable dentures cannot be used to replace the missing teeth;

(b) A summary of the beneficiary's medical history indicating the absence of systemic, behavioral, psychological, neurologic, and/or psychiatric disorders, including habits (e.g. substance abuse, tobacco use, and alcohol use) that may affect dental implant surgery, healing, and/or response to therapy;

(c) An evaluation of the proximity of the site of the requested dental implants to adjacent vital structures including but not limited to maxillary sinuses, fossae, foramina, mandibular canals, and adjacent teeth or roots;

(d) Periodontal charting, radiographic documentation of the absence of clinical calculus, oral hygiene status, and the date of the most recent oral prophylaxis not to exceed six (6) months prior to the request for the dental implants;

(e) Documentation of adequate quality, mass and density of alveolar bone and soft tissues;

(f) Documentation of at least three (3) millimeters of inter-dental space between the site of the requested dental implants and adjacent roots to maintain periodontal health and form; and

(g) A complete restorative treatment plan for the requested dental implants.

964.16 Dental implants shall not be replaced within five (5) years of initial placement without prior authorization from DHCF or its agent.

964.17 Medicaid beneficiaries twenty-one (21) years of age and over shall not be eligible to receive the following dental services:

(a) Local anesthesia used in conjunction with surgical procedures that are billed separately;

(b) Hygiene aids, including toothbrushes and dental floss;

(c) Cosmetic or aesthetic procedures;

(d) Medication dispensed by a dentist that a beneficiary could obtain over-the-counter from a pharmacy;

(e) Acid etch for a restoration that is billed separately;

(f) Fixed prosthodontics (such as a bridge), unless prior authorized;

(g) Gold restoration, inlay, or onlay, including cast non-precious and semiprecious metals;

(h) Duplicative x-rays;

(i) Space maintainers;

(j) Denture replacement when reline or rebase would correct the problem;

(k) Prosthesis cleaning;

(l) Removable unilateral partial dentures that are one-piece cast metal including clasps and teeth; and

(m) Dental implants replacing wisdom teeth.

964.18 Reimbursement for dental services provided to Medicaid beneficiaries twenty-one (21) years of age and older who do not reside in an ICF/IID and are not enrolled in the 1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities shall be made according to the DHCF fee schedule, available online at http://www.dc-medicaid.com, and shall cover all services related to the procedure.

964.19 Reimbursement for dental services provided to Medicaid beneficiaries twenty-one (21) years of age and older who reside in an ICF/IID or are enrolled in the 1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities shall be made at the increased rate described in 29 DCMR § 1921 and reflected in the DHCF fee schedule, available online at http://www.dc-medicaid.com.

964.99 DEFINITIONS

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

Dental Hygienist – A person who is licensed as a dental hygienist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.* (2012 Repl. & 2015 Supp.)) or licensed as a dental hygienist in the jurisdiction where the services are provided.

Dental Implant - A device specially designed to be placed surgically within or on the mandibular or maxillary bone as a means of providing for dental replacement.

Dentist – A person who is licensed as a dentist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.* (2012 Repl. & 2015 Supp.)) or licensed as a dentist in the jurisdiction where the services are provided.

Facility – A dental facility that is enrolled as a District Medicaid provider.

Inpatient Hospitalization - Treatment in a hospital that requires at least one (1) overnight stay.

Orthodontic Services - Medically appropriate services that are necessary to correct severe handicapping malocclusion in beneficiaries under the age of twenty-one (21).

Treatment Plan – A written plan that includes diagnostic findings and treatment recommendations resulting from a comprehensive evaluation of the dental health needs of a beneficiary.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy/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 DHCFPubliccomment@dc.gov, or on-line at 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.