

## DEPARTMENT OF HEALTH CARE FINANCE

## NOTICE OF SECOND 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 Repl.)), 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 the following individuals: (1) adults who are elderly; (2) adults who have a developmental disability; (3) adults who have mental disorders; and (4) infants and children who are aged three (3) or younger. Services may include therapeutic activities, occupational, physical and speech therapy, nutrition services and specialized services for individuals with intellectual and mental disabilities.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) has required the termination of all existing fee-for-service (FFS) day treatment services authorized pursuant to Chapter 7 of Title 29 of the DCMR. Pursuant to this directive, DHCF has ceased enrollment for new beneficiaries into existing Medicaid fee-for-service day treatment programs effective January 1, 2013. DHCF and other District agencies developed transition plans and successfully transitioned many day treatment users to existing alternative services. Currently, DHCF and other District agencies are developing new service delivery models to address unmet needs. These second emergency and proposed rules will maintain DHCF's authority 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 currently receive Medicaid-funded services. CMS has informed the District that DHCF must conform to the requirements of Title XIX of the Social Security Act by ceasing new enrollment into existing Medicaid FFS day treatment programs and by amending its State Plan for Medical Assistance. The District faces enforcement action if DHCF fails to conform to CMS requirements by maintaining its ban on new fee-for-service day treatment services. Such enforcement action could result in significant disallowances for claims paid under DHCF's existing day treatment program rules. Disallowances, in turn, would force DHCF to identify budget savings that could reduce services extended to current Medicaid beneficiaries.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on December 14, 2012 (59 DCR 014834). Comments were received but no substantive changes have been made. The second emergency rule was adopted on August 16, 2013 and became effective on that date. The emergency rule will remain in effect for one hundred and twenty

(120) days or until December 12, 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 Subsection 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 Subsection 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 Subsection 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 Sections 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, D.C. 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.