

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 (2014 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) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 4209 of Chapter 42 (Home and Community-Based Services Waiver For Persons Who Are Elderly and Individuals with Physical Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR).

These emergency and proposed rules amend the previously published rules governing reimbursement of providers of personal care services under the District of Columbia Home and Community-Based Waiver for persons who are elderly and individuals with physical disabilities by increasing the reimbursement rates for services rendered by a personal care aide (PCA) by eight (8) cents per hour to comply with the with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who are in need of personal care aide services. Based upon current reimbursement requirements, payments to home care providers are not adequate to ensure compliance with the Living Wage Act of 2006. By taking emergency action, this rule will ensure that providers of personal care services are compensated for providing personal care services in accordance with the Living Wage Act of 2006. Therefore, in order to ensure that the beneficiaries' health, safety, and welfare are not threatened by the lapse of access to personal care services provided by qualified and equitably paid providers, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on December 31, 2015 and will become effective for services rendered beginning January 1, 2016. The emergency rules shall remain in effect for one hundred and twenty (120) days or until April 29, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 42, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 4209, REIMBURSEMENT RATES: PERSONAL CARE AIDE SERVICES, is amended to read as follows:

4209 REIMBURSEMENT RATES: PERSONAL CARE AIDE SERVICES

- 4209.1 A home care agency seeking reimbursement for personal care aide services shall meet the conditions of participation for home health agencies set forth in 42 C.F.R. § 484, and shall comply with the requirements set forth in the Health-Care and Community Residence Facility Act, Hospice, and Home-Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*).
- 4209.2 For dates of services beginning November 3 through December 31, 2015, each Provider shall be reimbursed five dollars (\$5.00) per unit of service for allowable services in accordance with the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119), as amended, and supplemented by the Health Care and Education Reconciliation Act of 2010, approved January 5, 2010 (Pub. L. No. 111-152, 124 Stat. 1029) and the District of Columbia Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code §§ 32-131.01 *et seq.*). The reimbursement rate includes administrative costs following the recent review of the FY 2013 Home Health Agencies cost reports. No less than three dollars and forty-five cents (\$3.45) shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 4209.3 For dates of services beginning January 1, 2016, each provider shall be reimbursed five dollars and two cents (\$5.02) per unit for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty-six cents (\$3.46) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 4209.4 Subsequent changes to the reimbursement rate(s) shall be posted on the Medicaid fee schedule at www.dc-medicaid.com. DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate (s).
- 4209.5 A unit of service for PCA services shall be fifteen (15) minutes spent performing allowable tasks.
- 4209.6 Reimbursement for personal care aide services shall not exceed sixteen (16) hours of service per day per recipient.
- 4209.7 A provider of waiver services shall not bill the recipient or any member of the recipient's family for personal care aide services.
- 4209.8 DHCF may limit or deny services, if the cost of the services in addition to other home care services exceeds the estimated cost of institutional care.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.