

## 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 Repl. & 2019 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) (2019 Repl.)), hereby gives notice of the adoption on an emergency basis, and the intent to adopt on a permanent basis, an amendment to Section 937 (Organ Transplant Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

DHCF is the single state agency for the administration of the State Medicaid program under Title XIX of the Social Security Act and the administration of the Children's Health Insurance Program under Title XXI of the Social Security Act in the District. DHCF currently provides Medicaid coverage for physician and hospital services rendered to Medicaid beneficiaries receiving liver, heart, lung, kidney, and stem cell transplantation. Services related to the transplantation procedure, the corresponding inpatient hospital stay, and any follow-up treatment are only reimbursable as a transplant service when the transplant recipient is a Medicaid-eligible individual. DHCF does not currently reimburse for medical services related to living donations for either the recipient or the living donor or for follow-up treatment provided to living donors.

DHCF believes that coverage of live donations for liver and kidney transplants will improve outcomes and reduce Medicaid health care expenditures associated with organ recipients. These rules propose to provide Medicaid coverage for procedures and medical care required to retrieve an organ from a living donor and transplant the donated organ to an organ recipient, regardless of the living donor's eligibility for Medicaid, if the following conditions are met: (1) the transplantation is for liver or kidney transplantation; (2) the organ recipient is an eligible Medicaid beneficiary; and (3) the procedure or medical care is a necessary part of the organ transplantation process, or is necessary as a result of the organ transplantation process.

These emergency and proposed rules correspond to an amendment to the District of Columbia State Plan for Medical Assistance, which requires approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). These rules shall be effective for services rendered on or after April 1, 2021, if the corresponding State Plan Amendment (SPA) has been approved by CMS with an effective date of April 1, 2021, or the effective date established by CMS in its approval of the corresponding SPA, whichever is later. If adopted, the District Medicaid Program estimates that the proposed changes in this rule will result in an increase of seventy thousand dollars (\$70,000) in total Medicaid expenditures in fiscal year (FY) 2021 and a savings of approximately two hundred two thousand one hundred seventy nine dollars (\$202,179) in total Medicaid expenditures in FY 2022.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid-eligible District residents who are in need of live donor kidney or liver transplant services. This emergency rulemaking is necessitated by the immediate need to ensure that vulnerable beneficiaries in need of kidney or liver transplant services receive these services.

These emergency and proposed rules were adopted on March 11, 2021 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until July 9, 2021, 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 the proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Section 937, ORGAN TRANSPLANT SERVICES, of Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**A new Subsection 937.16 is added to read as follows:**

- 937.16 Medicaid coverage shall also be available for a living organ donor for procedures and medical care required to retrieve and transplant an organ from the living donor, including related follow-up care, regardless of the living donor's eligibility for Medicaid, if all other requirements for Medicaid reimbursement of transplants are met and the following additional conditions are met:
- (a) The transplantation is for liver or kidney, as described under § 937.4(a) and (d), respectively;
  - (b) The organ recipient is an eligible Medicaid beneficiary; and
  - (c) The procedure or medical care is a necessary part of the organ transplantation process, or is necessary as a result of the organ transplantation process.

Comments on the proposed rule shall be submitted, in writing, to Melisa Byrd, Senior Deputy Director/State 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 [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.