

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. 744; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 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 repeal of Section 933 and adoption, on an emergency basis, of a new Section 1931, entitled “ Skilled Nursing Services,” of Chapter 19 (Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This Notice of Second Emergency and Proposed Rulemaking amends the previously published standards governing providers of skilled nursing services for participants enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver). These rules amend the previously published rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that the physician’s order prescribing the need for skilled nursing services shall be updated at least every ninety (90) calendar days and shall be maintained in the person’s records; (3) establishing that the duties of a registered nurse delivering skilled nursing services shall also include performing a nursing assessment in accordance with the Developmental Disabilities Administration (DDA) health and wellness standards; (4) establishing that the quarterly reports completed by a licensed practical nurse (LPN) shall be reviewed and signed off on by a supervising registered nurse (RN), when an LPN delivers skilled nursing services; (5) deleting the requirement that in order to be eligible for skilled nursing services, the person or support team shall submit at least three (3) bids to the Department of Disability Services (DDS) Service Coordinator for cost comparison; (6) requiring an RN who supervises an LPN to conduct a site visit once every thirty (30) days instead of every sixty two (62) days, or more frequently if applicable; and (7) mandating a provider to maintain a contingency plan when a scheduled nurse is unavailable or when the lack of immediate care poses a threat to the person receiving services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of skilled nursing services. The Waiver serves some of the District’s most vulnerable residents. Skilled nursing services are commonly used services under the Waiver. The new service authorization requirements for providers including the performance of a nursing assessment in accordance with DDA health and wellness standards will promote more efficient service delivery management practices and hence enhance the health, safety, and welfare of the participants who utilize skilled nursing services. In order to ensure that the residents’ health, safety, and welfare are not threatened by the lapse in access to the new service authorization requirements mandated under skilled nursing services under the updated rule which responds to stakeholder comments, it is necessary that that these rules be published on an emergency basis.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 25th, 2013 at 60 DCR 15013. Numerous comments were received. Substantive changes have been made as described above. The emergency rulemaking was adopted on January 24, 2014 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until May 23, 2014 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*.

Section 933 (Skilled Nursing) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1931 (Skilled Nursing) is added to Chapter 19 (Home and Community Based Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1931 SKILLED NURSING SERVICES

- 1931.1 The purpose of this section is to establish standards governing Medicaid eligibility for skilled nursing services under the Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of skilled nursing services.
- 1931.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers.
- 1931.3 To be eligible for Medicaid reimbursement, the person shall exhaust all available skilled nursing visits provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving skilled nursing services under the Waiver.
- 1931.4 To be eligible for Medicaid reimbursement, the person shall have a condition of circulatory or respiratory function complications, gastrointestinal complications, neurological function complications, or the existence of another severe medical condition that requires monitoring or care at least every other hour.
- 1931.5 To be eligible for Medicaid reimbursement, skilled nursing services shall:
- (a) Be ordered by a physician when it is reasonable and necessary to the treatment of the person's illness or injury, and include a letter of medical necessity, a summary of the person's medical history and the duties that the skilled nurse would perform; and a skilled nurse checklist; and

- (b) Authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care after all Medicaid State Plan skilled nursing visits have been exhausted.
- 1931.6 The physician's order described in Section 1931.5 shall include the scope, frequency, and duration of skilled nursing services, shall be updated at least every ninety (90) calendar days, and shall be maintained in the person's records.
- 1931.7 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse (RN) delivering skilled nursing services shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the District of Columbia Municipal Regulations (DCMR). They may include, at a minimum, but are not limited to the following duties:
- (a) Performing a nursing assessment in accordance with the Developmental Disabilities Administration's Health and Wellness Standards;
- (b) Assisting in the development of the Health Care Management Plan (HCMP);
- (c) Coordinating the person's care and referrals;
- (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements in the jurisdiction where services are provided;
- (e) Administering medication or oversight of non-licensed medication administration personnel;
- (f) Providing oversight and supervision to the licensed practical nurse (LPN), when delegating and assigning nursing interventions;
- (g) Providing updates to Department on Disability Services (DDS) every sixty (60) days, if there are any changes to the person's needs or physician's order;
- (h) Training the person, LPN, family, caregivers, and any other individual, as needed; and
- (i) Recording progress notes during each visit and summary notes at least quarterly.
- 1931.8 In order to be eligible for Medicaid reimbursement, the duties of an LPN delivering skilled nursing services shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 of the

DCMR. They may include, at minimum, but are not limited to the following duties:

- (a) Completing the quarterly reports which shall be reviewed and approved by the supervising RN;
- (b) Immediately reporting, immediately, any changes in the person's condition, to the supervising registered nurse;
- (c) Providing wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
- (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia. If services are provided in another jurisdiction, the services shall be consistent with that jurisdiction's requirements.

1931.9 Medicaid reimbursable skilled nursing services shall be provided by an RN or LPN under the supervision of an RN, in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 of the DCMR.

1931.10 In order to be eligible for Medicaid reimbursement, each person providing skilled nursing services shall:

- (a) Be employed by a home health agency that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services; and
- (b) Comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1931.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.

1931.12 To be eligible for Medicaid reimbursement, skilled nursing services shall have prior authorization from DDS.

1931.13 In order to be eligible for Medicaid reimbursement, the RN shall monitor and supervise the provision of services provided by the licensed practical nurse, including conducting a site visit at least once every thirty (30) days, or more frequently, if specified in the person's ISP.

1931.14 The RN shall ensure that the person's clinical record includes notes that are clearly written and contain a statement of the person's progress or lack of progress,

- medical conditions, functional losses, and treatment goals that demonstrate that the person's services are and continue to be reasonable and necessary.
- 1931.15 In order to be eligible for Medicaid reimbursement, each provider shall maintain records pursuant to the requirements described under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) under Chapter 19 of Title 29 of the DCMR.
- 1931.16 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall ensure that the LPN receives ongoing supervision and that the service provided is consistent with the person's ISP.
- 1931.17 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least quarterly. The skilled nursing provider shall also maintain a contingency plan that describes how skilled nursing will be provided when the scheduled nurse is unavailable; and, if the lack of immediate care poses a serious threat to the person's health and welfare, how the service will be provided when back-up staff are unavailable.
- 1931.18 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirements:
- (a) The person has exhausted all nursing visits allowable under the Medicaid State Plan;
 - (b) DDS provides a written service authorization before the commencement of services;
 - (c) The service name and home health agency delivering services must be identified in the ISP and Plan of Care;
 - (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
 - (e) Services shall not conflict with the service limitations described under Section 1931.20.
- 1931.19 Medicaid reimbursement for skilled nursing services is only available for individuals who live independently in their natural homes or host homes, and shall not be available when provided in a residential habilitation or supported living setting.
- 1931.20 Medicaid reimbursement is not available under the Waiver for skilled nursing visits that exceed fifty-two (52) visits per person annually.
- 1931.21 Upon exhaustion of the hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for one-to-one extended nursing services for twenty-four (24) hours a day, up to three hundred

and sixty-five (365) days, with prior approval from DDS, for persons on a ventilator or requiring frequent tracheal suctioning.

- 1931.22 Prior approval for one-to-one extended nursing services shall be obtained from the Medicaid Waiver Supervisor or designated DDS staff person after submission of documentation demonstrating the need for the extended services.
- 1931.23 Medicaid reimbursement governing the provision of skilled nursing services shall be developed using the following two (2) rate structures:
- (a) Skilled nursing services rate; and
 - (b) Extended skilled nursing services rate.
- 1931.24 The Medicaid reimbursement rate for skilled nursing services shall be sixty-five dollars (\$65.00) per visit for services provided by an RN or LPN for four (4) hours or less in duration. The Medicaid reimbursement rate for extended RN visits shall be thirty-two dollars (\$32) per hour or eight dollars (\$8) per fifteen minutes for extended RN visits for four (4) hours or less in duration. The Medicaid reimbursement rate for extended LPN visits shall be twenty dollars (\$20.00) per hour or five dollars (\$5) per fifteen minutes for extended visits for four (4) hours or less in duration.
- 1931.25 A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

Comments on the emergency and proposed rules shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900, Washington, D.C. 20002, via telephone at (202) 442-9115, 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 rules may be obtained from the above address.