

## 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 (2014 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 adoption of amendments to Section 1931, entitled “Skilled Nursing Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules change the reimbursement rate for skilled nursing services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver). Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. An amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The most recent Notice of Final Rulemaking for 29 DCMR § 1931 (Skilled Nursing Services) was published in the *D.C. Register* on November 27, 2015, at 62 DCR 15336. This emergency and proposed rulemaking amends the previously published final rulemaking by recognizing that reimbursement rates for skilled nursing and extended skilled nursing services are based on whether the services are being delivered by a registered nurse or a licensed practical nurse under the supervision of a registered nurse, by increasing the reimbursement rates so that they will be consistent with rate increases proposed for the Medicaid State Plan, and by ensuring consistency through tying subsequent increases in the reimbursement rates in the Medicaid State Plan for skilled nursing services to skilled nursing and extended skilled nursing services delivered under the ID/DD Waiver. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of these services as the rates must be increased.

The emergency rulemaking was adopted on April 5, 2016, and these rules became effective immediately. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date, or until August 3, 2016, 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 after the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Subsections 1931.21, 1931.22, 1931.23 and 1931.24 of Section 1931, SKILLED NURSING SERVICES, are amended, and a new Subsection 1931.26 is added, to read as follows:**

- 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 skilled nursing services for twenty-four (24) hours a day, for 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 skilled 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 and extended skilled nursing services shall be based on whether the Waiver services are being delivered by an RN or an LPN under the supervision of an RN.
- 1931.24 The Medicaid reimbursement rate for skilled nursing services and extended skilled nursing services shall be fifteen dollars (\$15.00) for each fifteen (15) minute unit of service for services provided by an RN, and twelve dollars and fifty cents (\$12.50) for each fifteen (15) minute unit of service provided by an LPN. The Medicaid reimbursement rate for an initial assessment is a flat rate of one hundred and twenty dollars (\$120.00). The initial assessment for skilled nursing services shall be used for new admissions and any significant health condition changes that may warrant changes in a person's supports and services. The Medicaid reimbursement rate for quarterly reassessments and supervisory visits shall be the RN rate for each fifteen (15) minute unit of service not to exceed a total of eight (8) units of service per reassessment or supervisory visit.
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- 1931.26 Any future increases in the Medicaid reimbursement rate for skilled nursing services under the Medicaid State Plan, listed in Title 29 (Public Welfare) of the DCMR, shall be applied equally to skilled nursing services and extended skilled nursing services through the Waiver.

Comments on these emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by 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 these emergency and proposed rules may be obtained from the above address.