

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, 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), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of the following amendments to Chapter 9 entitled "Medicaid Program" of Title 29 of the District of Columbia Municipal Regulations (DCMR). The amendments will change the rules governing Medicaid reimbursement to nursing facilities by removing provisions that require rates paid to nursing facilities be adjusted annually for inflation.

Each nursing facility is paid a facility specific per diem rate, subject to a ceiling and adjusted annually for inflation in accordance with the applicable Medicare index. The amendment would eliminate the inflation adjustment, thereby resulting in rates being paid at the Fiscal Year 2002 payment levels. To ensure compliance with the federal law, the Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan). A State Plan Amendment to implement the requirements set forth in these rules was approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. The Medicaid Program will save approximately \$11 million dollars in state and federal funds in Fiscal Year 2003 as a result of the change. A notice of proposed rulemaking was published in the *D.C. Register* on March 21, 2003 (50 DCR 2344). Comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective one day after publication of this notice in the *D.C. Register*.

Chapter 9, Title 29 of the District of Columbia Municipal Regulations (Public Welfare) (May 1987) is amended as follows:

Section 950.1 (Reimbursement of Nursing Facilities) is amended to read as follows:

950.1 Each nursing facility shall be reimbursed on a prospective basis at a facility-specific per diem rate for all services provided. The facility-specific per diem rate shall be developed by establishing a base year per diem rate for each facility, subject to a ceiling and indexed annually for inflation through the effective date of these rules, subject to adjustments.

Section 952.1 (Calculation of Rate) is amended to read as follows:

952.1 For services rendered on or after October 1, 1996, each nursing facility shall be paid its base year per diem rate calculated in accordance with

sections 950 and 951 and adjusted for inflation through the effective date of these rules pursuant to subsections 952.2 and 952.3.

Section 952.5 (Calculation of Rate) is amended to read as follows:

952.5 The rate paid to each facility shall be reduced by a facility-specific ancillary per diem for Medicaid recipients with Medicare Part B coverage. The facility specific ancillary per diem is the sum of all ancillary cost centers which include categories of cost covered under Medicare Part B in the base year, divided by the base year total patient days adjusted to September 30, 1995 by the Bureau of Labor Statistics Medical Care Services Consumer Price Index and adjusted for inflation through the effective date of these rules pursuant to the factors set forth in subsections 952.2 and 952.3

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Each nursing facility is paid a facility specific per diem rate, subject to a ceiling and adjusted for inflation. A provider may request an exception from the Medicaid operating cost ceilings and receive payments in excess of established ceilings, if certain cost criteria are met. The effect of these final rules would ensure that reimbursement to each nursing facility will not exceed the established ceilings. This provision was modeled after a provision in the Medicare rules governing reimbursement to nursing facilities, which is no longer in effect. To ensure compliance with the federal law, the Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan). A State Plan Amendment to implement the requirements set forth in these rules was approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. The Medicaid Program will save approximately \$1.7 million dollars in state and federal funds in Fiscal Year 2003 as a result of the change. A notice of proposed rulemaking was published in the *D.C. Register* on February 21, 2003 (50 DCR 1747). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective one day after publication of this notice in the *D.C. Register*.

Amend Chapter 9 (Medicaid Program), Title 29 DCMR by deleting subsections 951.10 and 951.11 in their entirety.

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The Director of the Department of Health, 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), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of the following amendments to Chapter 9 entitled "Medicaid Program" of Title 29 of the District of Columbia Municipal Regulations (DCMR). The amendments will change the rules governing Medicaid reimbursement to intermediate care facilities for the mentally retarded (ICFs/MR) by removing provisions that require rates paid to ICFs/MR be adjusted annually for inflation.

Each ICF/MR is paid a facility specific per diem rate, subject to a ceiling and adjusted annually for inflation in accordance with the applicable Medicare index. The amendment would eliminate the inflation adjustment, thereby resulting in rates being paid at the Fiscal Year 2002 payment levels. To ensure compliance with the federal law, the Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan). A State Plan Amendment to implement the requirements set forth in these rules was approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. The Medicaid Program will save approximately \$4.0 million dollars in state and federal funds in Fiscal Year 2003 as a result of the change. A notice of proposed rulemaking was published in the *D.C. Register* on March 21, 2003 (50 DCR 2346). Comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective one day after publication of this notice in the *D.C. Register*.

Chapter 9, Title 29 of the District of Columbia Municipal Regulations (Public Welfare) (May 1987) is amended as follows:

Section 968.1 (Reimbursement of Intermediate Care Facilities for the Mentally Retarded) is amended to read as follows:

968.1 Each intermediate care facility for the mentally retarded ("ICF/MR") shall be reimbursed on a prospective basis at a facility-specific per diem rate for all services provided. The facility-specific per diem rate shall be developed by establishing a base year per diem rate for each facility, subject to a ceiling and indexed annually for inflation through the effective date of these rules, subject to adjustments.

Section 970.1 (Calculation of Rate) is amended to read as follows:

970.1 Each ICF/MR shall be paid its base year per diem rate calculated in accordance with sections 968 and 969, and adjusted for inflation through the effective date of these rules pursuant to this section.

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The Director of the Department of Health, 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), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of the following amendments to Chapter 48 entitled "Medicaid Program: Reimbursement" of Title 29 of the District of Columbia Municipal Regulations (DCMR). The amendments will change the rules governing Medicaid reimbursement to hospitals for inpatient hospital services by removing provisions that require rates paid to hospitals be adjusted annually for inflation.

Each claim for inpatient hospital services submitted for payment pursuant to the All Payers-Diagnosis Related Group Prospective Payment System is reimbursed a base payment rate, subject to adjustments for certain additional costs and adjusted annually for inflation. The amendments would eliminate the inflation adjustment, thereby resulting in rates being paid at the Fiscal Year 2002 payment levels. To ensure compliance with the federal law, the Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan). A State Plan Amendment to implement the requirements set forth in these rules was approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. The Medicaid Program will save approximately \$8.5 million dollars in state and federal funds in Fiscal Year 2003 as a result of the change. A notice of proposed rulemaking was published in the *D.C. Register* on March 21, 2003 (50 DCR 2348). Comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective one day after publication of this notice in the *D.C. Register*.

Chapter 48, Title 29 of the District of Columbia Municipal Regulations (Public Welfare) (May 1987) is amended as follows:

Section 4803.2 (Adjustment for Inflation) is amended to read as follows:

4803.2 Beginning October 1, 1999, all base year payment rates shall be adjusted for inflation through the effective date of these rules pursuant to the most recently published projected Hospital Index for the applicable Fiscal Year.

Section 4805.5 (Calculations of Add-Ons to the Final Base Payment Rate) is amended to read as follows:

4805.5 The add-on payment for graduate medical education shall be indexed for inflation through the effective date of these rules by a factor obtained from

the most recently published projected Hospital Index for the applicable Fiscal Year.

Section 4805.8 (c) (Calculations of Add-Ons to the Final Base Payment Rate) is amended to read as follows:

4805.8 (c) The amount established in subsection 4805.8(b) shall be indexed for inflation through the effective date of these rules by the most recently published projected Hospital Index for the applicable Fiscal Year to determine the add-on payment for indirect medical education costs.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of section 7 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002, D.C. Law 14-137; Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code §§ 10-1141.01 et seq.); Mayor's Order 96-8, 43 DCR 615 (February 9, 1996); and Mayor's Order 02-102, (June 12, 2002), hereby gives notice of the adoption of amendments to the District of Columbia Department of Public Works Standard Specifications for Highways and Structures by adding subsection 213.08 and to Chapter 34 of the Public Space and Safety Regulations (24 DCMR), subsections 3405.1 and 3405.2. The proposed amendments will revise existing procedures and standards governing the excavation and restoration of public space or public rights-of-way.

A notice of proposed rulemaking was published in the D.C. Register (49 DCR 9684) on October 25, 2002. In response to industry comment, the rulemaking was submitted for publication in final form with the amendments to section 213.08 of the Standard Specifications for Highways and Structures, and amendment to section 3405 of 24 DCMR removed. Those sections were republished in proposed form to garner further industry comment on February 28, 2003 (50 DCR 1916). Minor, non-substantive, changes have been made to the proposed text in order to clarify requirements.

These final rules will be effective upon publication of this notice in the *D.C. Register*.

The District of Columbia Department of Public Works Standard Specifications for Highways and Structures is amended as follows:

A. By adding section 213.08 to read as follows:

213.08 REMOVAL OF PAVEMENT MARKINGS. When the location of underground utilities must be temporarily marked on the overlying pavement, the party requesting the markings shall remove all markings immediately upon:

- a. Completion of the excavation;
- b. At the time the markings are no longer necessary for safety or other reasons; or
- c. Twenty (20) days after a permit is granted where excavation has not commenced.

B. By amending subsection 3405 as follows:

- 1) Subsection 3405.1 is amended to read as follows:

3405.1 Deposit. Each Applicant shall submit and maintain with the Department a bond, cash deposit, or other security acceptable to the Director securing the faithful performance of the obligations of the Owner and Applicant under any Permit(s) to Excavate and the compliance with all terms and conditions of this Chapter. If the Applicant chooses to maintain a bond with the Department, the bond shall be continuously valid for two years at any point in time during the length of the permit.

2) Subsection 3405.2 is amended to read as follows:

3405.2 The Deposit shall be in the amounts as follows:

- (a) Where the Applicant/Permittee will be excavating from one (1') up to six hundred (600') linear feet of the public space during any twelve (12) month period, the deposit shall be in the sum of fifty thousand dollars (\$50,000), payable to the D.C. Treasurer. If, at any point during the twelve (12) month period the Applicant/Permittee proposes to excavate more than six hundred (600') linear feet of public space, the Applicant/Permittee shall be required to increase the amount of the deposit to the appropriate amount as indicated in this subsection.
- (b) Where the Applicant/Permittee proposes to excavate from six hundred and one (601') up to twelve hundred (1200') linear feet of the public space during any twelve (12) month period, the deposit shall be in the sum of one hundred thousand dollars (\$100,000), payable to the D.C. Treasurer. If, at any point during the twelve (12) month period the Applicant/Permittee proposes to excavate more than twelve hundred (1200') linear feet of public space, the Applicant/Permittee shall be required to increase the amount of the deposit to a total of two hundred thousand dollars, (\$200,000) as indicated in subsection (c) below.
- (c) Where the Applicant/Permittee proposes to excavate twelve hundred and one feet (1201') or more of the public space during any twelve (12) month period, the deposit shall be in the sum of two hundred thousand dollars (\$200,000), payable to the D.C. Treasurer.

Where the Permittee has an existing bond with the Department at the time this section becomes effective, the requirements of this subsection will not be enforced until the time the existing bond expires. Upon the expiration of the existing bond, all requirements of this subsection shall become effective.

3) Subsection 3405.3 is amended by inserting the following language after the last sentence:

Upon deduction from such a Deposit, the Permittee shall immediately cease all excavation work in the Public Space and the public Rights-of-Way. The Permittee shall not resume excavation activities, or be eligible for future excavation permits, until it restores the full amount of the Deposit. At the discretion of the Director, in the case of an emergency, the Permittee may be allowed to continue excavation activities before the bond has been restored in full.