

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)) (“Act”), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendments to chapter 65 of Title 17 of the District of Columbia Municipal Regulations (DCMR) (Pharmacists).

The purpose of the proposed amendments is to postpone increasing the requirement for pharmacy students to complete an additional five hundred (500) hours of independent pre-licensure practice in a pharmacy setting with the emphasis being on the distribution of medicines and prescriptions; and to postpone the requirement for all individuals engaging in pre-licensure professional practice or working as a pharmacy intern in the District to be registered with the Board after entering the first professional year of college of pharmacy whether or not the hours will be counted toward the total requirement for licensure as a pharmacist. The increased requirements will be imposed for the first time on those students that are in the graduating class of 2011.

Final rulemaking action to adopt this amendment shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:**17 DCMR Chapter 65, PHARMACISTS, is amended as follows:****Section 6502.5 is amended to read as follows:**

6502.5 Starting with the graduating Class of 2011, in addition to the requirements of §§ 6502.1(b) of this chapter, each applicant for a pharmacist license shall submit proof of having completed an additional five hundred (500) hours of independent pre-licensure practice in a pharmacy setting with the emphasis being on the distribution of medicines and prescriptions.

Section 6509.2 is amended to read as follows:

6509.2 Starting with the graduating Class of 2011, all individuals engaging in pre-licensure professional practice or working as a pharmacy intern in the District shall register with the Board after entering the first professional year of a college of pharmacy whether or not the hours will be counted toward the total requirement for licensure as a pharmacist.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Kenneth Campbell, General Counsel, the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, 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) 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)), hereby gives notice of the intent to amend Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). This rulemaking amends subsection 996 (Provider of Durable Medical Equipment, Prosthetics, and Orthotics Supplies) and subsection 999 (Definitions) as published in the *D.C. Register* at pages 6153 through 6158 of Volume 55 on May 30, 2008.

The rulemaking would establish new provider requirements regarding the amount and number of surety bonds required for providers, submitting a CMS Medicare Supplier Letter, conditions for enrollment, and extending privacy to Medicaid beneficiaries when fitting appliances. The rulemaking would also change the name of the entity responsible for administration of the D.C. Medicaid Program from the now-abolished Medical Assistance Administration within the Department of Health to the newly-established Department of Health Care Finance. The Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services previously conducted an interview and questionnaire to determine the standards used by the District of Columbia (District) when enrolling Durable Medical Equipment, Prosthetics, and Orthotics Suppliers (DMEPOS) providers, the extent to which the District verifies these standards during the enrollment process, and the extent to which the District re-enrolls Medicaid DMEPOS providers. As a result of the OIG's findings, the District continues to strengthen the management and oversight of Medicaid DMEPOS providers by amending this rulemaking.

A Notice of Proposed Rulemaking was published in the *D.C. Register* at pages 1817 through 1822 of Volume 56 on February 27, 2009. One set of comments were received from the Surety and Fidelity Association of America recommending that DHCF amend the proposed structure for determining the amount of the surety bond required for a provider. In response to the Association's recommendations, section 996.4 has been amended to require each provider to post a continuous surety bond in the amount of \$50,000 and require a new continuous surety bond when a change of ownership occurs. Section 996.4 also includes guidelines for determining the number of surety bonds that are required for a provider based upon the provider's National Provider Identifier Number (NPI).

The Director also gives notice of intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

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

Section 996 is deleted in its entirety and amended to read as follows:

996 Provider of Durable Medical Equipment, Prosthesis and Orthotics Supplies

996.1 A provider of Durable Medical Equipment, Prosthetics, and Orthotics Supplies (DMEPOS) shall be governed by the policies and procedures located in the Provider

Handbook for Durable Medical Equipment/Prosthetics and Orthotics Supplies provided by the Department of Health Care Finance (DHCF).

996.2

A provider of DMEPOS shall:

- (a) Operate a business that furnishes Medicare-covered items in compliance with all applicable federal and District of Columbia licensure and regulatory requirements;
- (b) Be eligible to engage in DMEPOS business once the provider has participated in the Medicaid DMEPOS New Provider Training conducted by DHCF and signed a Medicaid DMEPOS Provider Agreement accepted by DHCF;
- (c) Maintain a physical facility that contains space for storing business records, including the supplier's delivery, maintenance, and beneficiary communication records;
- (d) Be prohibited from using a post office box as a primary business address;
- (e) Be open for business at least forty (40) hours per week in a week that does not contain a holiday where DHCF is closed on a weekday and be open for business at least thirty-two (32) hours per week in a week that does contain a holiday where DHCF is closed on a weekday;
- (f) Maintain a visible sign that states the name of the provider and posted hours of operation;
- (g) Permit on-site inspections to be conducted by the Centers for Medicare and Medicaid Services (CMS), its agents, the Department of Health (DOH), DHCF or the agents of DOH or DHCF to determine supplier compliance with all applicable laws;
- (h) Promote and maintain a beneficiary's right to privacy when services include fittings of DMEPOS;
- (i) Provide patient education on the proper use of services and/or equipment;
- (j) Maintain a primary business telephone number listed under the name of the business locally and, if appropriate, a toll-free telephone number for Medicaid beneficiaries. The exclusive use of a beeper number, answering service, pager, telephone line connected to a facsimile machine, or wireless telephone does not satisfy the requirement to have a primary business telephone; and
- (k) Submit a document commonly known as a CMS Medicare Supplier Letter issued pursuant to 42 C.F.R. § 424.510 to evidence enrollment of the supplier in the Medicare program.

- 996.3 A provider shall maintain, at minimum, comprehensive liability insurance in the amount of three hundred thousand dollars (\$300,000.00) and shall provide proof of such insurance to DHCF with its initial application and annually thereafter.
- 996.4 Each applicant and provider shall post a continuous surety bond in the amount of fifty thousand dollars (\$50,000) against all claims, suits, judgments, or damages including court costs and attorneys fees arising out of the negligence or omissions of the provider in the course of providing services to a Medicaid beneficiary or a person believed to be a Medicaid beneficiary. The number of bonds required shall be predicated upon each provider's National Identification Number (NPI). The DMEPOS provider categories shall be determined as follows:
- (a) An existing provider who is providing services in the D.C. Medicaid program;
 - (b) A new applicant seeking to become a provider in the D.C. Medicaid program; or
 - (c) A provider who is submitting a new application to change the ownership of an existing enrolled provider, pursuant to §996.6.
- 996.5 A provider shall be required to re-enroll in the Medicaid DMEPOS Program at least once every three (3) years.
- 996.6 A provider shall be re-enrolled in the Medicaid DMEPOS Program immediately after any change in business ownership.
- 996.7 A provider shall be required to submit required certifications, licenses, permits or any other official information concerning the backgrounds of all employees, licensed or unlicensed, that will interact with Medicaid beneficiaries.
- 996.8 A provider shall submit the following information:
- (a) A list of all principals of the entity;
 - (b) A list of all stockholders owning or controlling ten (10) percent or more of outstanding shares;
 - (c) The names of all board members and their affiliations;
 - (d) A roster of key personnel; and
 - (e) An organizational chart.
- 996.9 A provider shall maintain all Medicaid-related records for a period of ten (10) years after the date of service or sale.
- 996.10 A provider shall fill orders, fabricate, or fit items from its inventory or by contracting with other companies for the purchase of items necessary to fill the order.
- 996.11 At the time of product delivery or service, the provider shall provide the beneficiary with a contact telephone number for assistance.

- 996.12 A business formed within the geographical boundaries of the District of Columbia seeking enrollment in the District of Columbia Medicaid DMEPOS Program shall be considered an in-state business.
- 996.13 An in-state business shall submit to DHCF a business license, if required, and a Notice of Business Tax Registration pursuant to D.C. Official Code § 47-2026 (2001).
- 996.14 A business formed outside of the geographical boundaries of the District of Columbia shall be considered an out-of-state business.
- 996.15 An out-of-state business seeking enrollment in the District Medicaid DMEPOS Program shall first be enrolled in a Medicaid program located within the state of its principal place of business.
- 996.16 An out-of-state business shall submit all of the following that apply:
- (a) A Certificate of Authority to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-101.99 et seq. (2001) if the business is a corporation;
 - (b) A Certificate of Registration to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-1053 et seq. (2001) if the business is a limited liability company;
 - (c) The name of its registered agent for the out-of-state business along with the business address and telephone number of the registered agent;
 - (d) Proof of a physical business address and a business telephone number within the District of Columbia listed under the name of the business for the purpose of providing Medicaid sales and services; and,
 - (e) The Medicaid enrollment provider number from the state where the out-of-state business' principal place of business is located.
- 996.17 DHCF shall review an applicant's signed and completed application within thirty (30) business days from its receipt by DHCF.
- 996.18 DHCF shall return a provider application package to the applicant when DHCF determines the provider application package to be incomplete or to contain incorrect information only two (2) times within a twelve (12) month period.
- 996.19 A DMEPOS Provider Enrollment Application may be denied due to any one or more of the following factors:
- (a) The applicant has demonstrated inability to provide services, conduct business, or operate a financially viable entity;

- (b) Current availability of services or supplies for beneficiaries taking into account geographic location and reasonable travel time;
- (c) Number of providers of the same type of service or supplies enrolled in the same geographic area;
- (d) False representation or omission of any material fact in making the application;
- (e) Exclusion, suspension, or termination from any Medicaid program;
- (f) Exclusion, suspension, or termination from any program managed by DHCF;
- (g) Conviction of any criminal offense relating to the delivery of any goods or services for a Medicaid beneficiary;
- (h) Conviction of any criminal offense relating to fraud, theft, embezzlement, fiduciary responsibility, or other financial misconduct;
- (i) Violation of federal or District of Columbia laws, rules or regulations governing the D.C. Medicaid program;
- (j) Violation of federal or state laws, rules, or regulations governing a Medicaid program in another state;
- (k) The applicant has been previously found by a licensing, certifying, or professional standards board to have violated the standards or conditions relating to licensure or certification of the services provided;
- (l) Exclusion, suspension, or termination from any Medicare program; or
- (m) DHCF has returned a provider application package to the applicant that is incomplete or contains incorrect information at least two (2) times in the past twelve (12) months.

996.20 An applicant, whose provider application has been denied, may resubmit a provider enrollment application for review and a decision.

996.21 An applicant, whose provider application has been approved to become a D.C. Medicaid DMEPOS Provider, is deemed to be enrolled when the applicant has:

- (a) Successfully completed the DMEPOS Application that is approved by DHCF;
- (b) Signed a District of Columbia Medicaid DMEPOS Provider Agreement that has been accepted by DHCF;
- (c) Participated in a mandatory Medicaid DMEPOS New Provider Orientation conducted by DHCF or its agent; and

- (d) Received the DHCF Provider Handbook for Durable Medical Equipment Prosthetics and Orthotics Supplies from DHCF or its agent.

996.22 DHCF may authorize a temporary enrollment of an applicant in the case of a special circumstance when a Medicaid beneficiary requires immediate service, supplies, or equipment, subject to the following limitations:

- (a) Temporary enrollment shall be for one specific occurrence involving an identifiable Medicaid beneficiary;
- (b) Temporary enrollment shall only be made available one time to a provider; or
- (c) Temporary enrollment may be allowed in situations when the D.C. Medicaid Program is not the primary payer.

996.23 A temporary provider may become eligible to apply for enrollment in the District of Columbia DMEPOS Program anytime during temporary eligibility or subsequently thereafter.

996.24 DHCF may adopt and include in the provider agreement other requirements and stipulations that it finds necessary to properly and efficiently administer the D.C. Medicaid Program.

996.25 DHCF may make, or cause to be made, payments for medical assistance and related services rendered to Medicaid beneficiaries only when:

- (a) The entity has a current DMEPOS Provider Agreement in effect with DHCF;
- (b) The entity is performing services and supplying goods in accordance with federal and District laws; and
- (c) The provider is eligible to provide the item or service on the date it is dispensed and the beneficiary is eligible to receive the item or service on the date the item or service is furnished.

996.26 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 of the District of Columbia Municipal Regulations during the provider's participation in the District Medicaid DMEPOS Program.

996.27 DHCF shall have the authority to implement a one hundred eighty (180) day moratorium on the enrollment of DMEPOS providers when the action is necessary to safeguard public funds or to maintain the fiscal integrity of the program. This moratorium may be extended or repeated when DHCF determines this action is necessary to further safeguard public funds or to maintain the fiscal integrity of the program.

996.28 Any provider agreement for DMEPOS in existence on or before May 30, 2008 shall expire on December 31, 2009, unless the provider agreement for DMEPOS contains an expiration date on or before January 1, 2010. Any provider of DMEPOS whose provider agreement expires on or

before January 1, 2010 is eligible to submit a new provider agreement pursuant to the rules specified in Section 996 of Chapter 9 of Title 29 of the D.C. Municipal Regulations.

Add the following definitions to section 999.1

999.1 DEFINITIONS

Beneficiary – Any individual who has been designated as eligible to receive or who receives any item or service under the D.C. Medicaid program.

Department of Health Care Finance – The executive department responsible for administering the Medicaid program within the District of Columbia effective October 1, 2008.

DHCF – Department of Health Care Finance

Delete the current definition for Medical Assistance Administration in section 999.1 and replace it with the following definition:

999.1 DEFINITIONS

Medical Assistance Administration – The administration within the Department of Health responsible for administering the Medicaid program within the District of Columbia until October 1, 2008.

Persons desiring to comment on these proposed rules should submit comments in writing within thirty (30) days of publication of this notice in the *D.C. Register* to John McCarthy, Deputy Director, Department of Health Care Finance, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of these proposed rules and related information may be obtained from the same address.

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904); section 107 of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104, §107; DC Official Code § 50-2301.07); and Mayor's Order 07-168, effective July 10, 2007, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapter 30 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Adjudication and Enforcement).

The proposed amendments would permit the use of hand-held electronic ticketing devices as an alternative method for the issuance of moving violations. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 18 DCMR is amended as follows:

Chapter 30, ADJUDICATION AND ENFORCEMENT, is amended as follows:

A. Section 3000 (NOTICE OF INFRACTION) is amended as follows:

1. Subsection 3000.7 is amended by inserting the phrase "moving or" before the phrase "parking violation".
2. Subsection 3000.8 is amended by inserting the phrase "moving or" before the phrase "parking violation".

B. Section 3002 (ISSUANCE OF PARKING VIOLATIONS ONLY), subsection 3002.6 is amended as follows:

3002.6 When a hand-held electronic device is used, the one-page printout Notice shall constitute the complaint.

C. Section 3003 (ISSUANCE OF MOVING AND NON-MOVING VIOLATIONS) is amended as follows:

1. Subsection 3003.3 is amended to read as follows:

3003.3 When information is entered on the ticket manually, the provisions of §§ 3002.3 through 3002.5 and 3002.9 shall apply.

2. Subsection 3003.4 is amended to read as follows:

3003.4 When a hand-held electronic device is used, the provisions of §§ 3002.6 through 3002.7 and 3002.10 shall apply.

3. Subsection 3003.5 is amended to read as follows:

3003.5 When a violation is detected by an automated traffic enforcement device, any resulting ticket shall be mailed to the owner and the relevant information transmitted to the Department of Motor Vehicles within twenty-five (25) days after the date the violation was detected.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.