

DEPARTMENT OF HEALTH CARE FINANCE**NOTICE OF 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. 774; D.C. Official Code §1-307.02), and 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 adopt a new section 965 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), to be entitled "Medicaid Utilization and Review".

DHCF processed more than ten million claims for reimbursement for services rendered by District of Columbia Medicaid providers. In Fiscal Year 2009, payment for these claims represented more than one billion dollars. Federal rules require DHCF to review these claims to ensure that they were not paid in error and that no fraudulent claims were paid. DHCF employs strategies to efficiently review as many claims as possible and recover payments made in error. One strategy is to select a representative sample of claims for the period under review using a statistically valid sampling method. The error rate found in the sample will be applied to the entire group of claims during the audit period to determine the amount of the overpayment which may be recovered by DHCF. This process of applying the error rate from a statistically valid sample to the larger group from which the sample is selected is known as extrapolation. Most state Medicaid agencies use sampling and extrapolation to review claims and determine the amount of overpayment due to the state. District rules currently authorize the use of sampling and extrapolation for several types of services. The Fiscal Year 2010 Budget Support Act of 2009 (D.C. Act 18-255) requires DHCF to expand sampling and extrapolation methods for all services. These proposed rules therefore will require the use of sampling and extrapolation for all services that are audited by DHCF and provided under the Medicaid program.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules no less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

A new section 965 (Medicaid Utilization and Review) is added to Chapter 9 of Title 29 DCMR to read as follows:

965 MEDICAID UTILIZATION AND REVIEW

965.1 The Department of Health Care Finance (DHCF) shall perform audits and reviews to ensure that Medicaid payments are consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing Medicaid.

- 965.2 The audit and review process shall be routinely conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid.
- 965.3 Each provider shall allow access to relevant records and program documentation during an on-site audit or review by representatives of DHCF, other District of Columbia government agencies, the United States Department of Health and Human Services (HHS) and other federal agencies.
- 965.4 If DHCF denies a claim, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following the period of administrative review as set forth in section 965.10.
- 965.5 The recoupment amounts for denied claims shall be determined by the following formula: A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample. The denominator shall be the total number of paid claims from the audit sample. This fraction shall be multiplied by the total dollars paid by DHCF to the provider during the audit period. The resulting amount shall be the amount to be recouped. For example, if a provider received Medicaid reimbursement of ten thousand dollars (\$10,000) during the audit period, and during a review of the claims from the audited sample ten (10) claims out of one hundred (100) claims are denied, then ten percent (10%) of the amount reimbursed by Medicaid during the audit period, or one thousand dollars (\$1000) would be recouped.
- 965.6 DHCF shall issue a Notice of Recoupment which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement which authorize the denial of each claim, the amount to be recouped, and the procedures for requesting an administrative review.
- 965.7 The provider shall have sixty (60) days after the date DHCF issues the Notice of Recoupment to request an administrative review of the Notice of Recoupment. The request for administrative review shall be in writing and shall be submitted to DHCF staff as identified in the Notice of Recoupment.
- 965.8 The request for administrative review shall include a specific description of each item requested to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested.
- 965.9 DHCF shall transmit to the provider a written determination approving or denying each item requested to be reviewed no later than one hundred and twenty (120) days after the date of the written request for administrative review.
- 965.10 The provider may appeal the written determination described in section 965.9 within forty-five (45) days of its receipt by filing a written notice of appeal with the District's Office of Administrative Hearings, 825 North Capitol Street, N.E., Suite 4150, Washington, DC 20002.

965.11 The filing of an appeal with the Office of Administrative Hearings shall not stay any action to recover recoupment amounts from the provider.

965.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

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

Overpayment – a payment or portion of a payment made to a Medicaid provider in excess of the payment to which the provider was entitled under the District of Columbia or federal laws and regulations governing the Medicaid program.

Provider - an individual or entity enrolled in the Medicaid program furnishing services pursuant to a Medicaid provider agreement.

Statistically valid scientific sampling- the collection of data using generally accepted sampling methods.

Persons desiring to comment on these proposed rules should submit comments in writing within thirty (30) days after publication of this notice in the *D.C. Register* to Dr. Julie Hudman, Director, the Department of Health Care Finance, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of these proposed rules may be obtained between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, at the address stated above.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGFORMAL CASE NO. 945 IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY PRACTICES

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Sections 2-505 (a) and 34-1518 of the District of Columbia Official Code,¹ of its intent to adopt the following amendments to Chapter 9 of Title 15 of the District of Columbia Municipal Regulations (“DCMR”), not less than thirty (30) days after publication of this notice in the *D.C. Register*. The proposed rules amend the provisions governing net energy metering in the District of Columbia to comport with the “Clean and Affordable Energy Act of 2008”² and the Commission’s Interconnection Rules under Chapter 40 of Title 15 of the DCMR.³ This Notice of Proposed Rulemaking (“NOPR”) replaces the prior NOPR for the proposed rules, which were published in the *D.C. Register* on October 2, 2009.⁴

Proposed Amendment: The present Chapter 9 is repealed in its entirety and is substituted by the following Chapter 9.

CHAPTER 9 NET ENERGY METERING**900 GENERAL PROVISIONS**

- 900.1 The purpose of this chapter is to set forth the policies and procedures for implementation of the net energy metering provisions of the “Retail Electric Competition and Consumer Protection Act of 1999,” as amended, and the Clean and Affordable Energy Act of 2008.
- 900.2 This chapter establishes the Public Service Commission of the District of Columbia Rules and Regulations Governing Net Energy Metering, including eligibility for participating in net energy metering, a bill crediting mechanism, net energy billing requirements for participants, net metering-related equipment requirements, a standard contract requirement, and safety and performance standards. This chapter shall be

¹ D.C. Code §§ 2-505 (a) and 34-1518 (2001 Ed.).

² D.C. Code § 1501 (15) (2009 Supp.).

³ *F.C. 1050, 56 D.C. Reg.* 001415-001487 (February 13, 2009) to be codified as 15 D.C.M.R. Chapter 40, District of Columbia Small Generator Interconnection Rules (“DCSGIR”).

⁴ *Formal Case No. 945, In The Matter of the Investigation into Electric Service Market Competition and Regulatory Practices*, (“F.C. 945”), 56 *D.C. Reg.* 7851-7856 (October 2, 2009).

cited as the “District of Columbia Net Energy Metering Rules.”

900.3 The provisions of this chapter are promulgated pursuant to the authority set forth in Section 34-1518 of the D.C. Official Code.

901 ELIGIBLE CUSTOMER-GENERATORS

901.1 Eligible customer-generators utilizing renewable resources, cogeneration, fuel cells, or microturbines may elect and shall be afforded the opportunity to participate in net energy metering. An eligible customer-generator’s facility shall meet all applicable safety and performance standards established by the National Electrical Code (“NEC”), National Electrical Safety Code (“NESC”), the Institute of Electrical and Electronics Engineers (“IEEE”), Underwriters Laboratories (“UL”) and any other relevant standards specified by the Commission.

902 NET ENERGY BILLING AND CREDITING FOR CUSTOMERS OF COMPETITIVE ELECTRICITY SUPPLIERS

902.1 A customer that has elected net energy billing may obtain generation service from any Competitive Electricity Supplier that agrees to provide service on a net energy basis. In such circumstances, the net inflow or outflow of electricity supplied to or by the customer-generator will be billed or credited at the Competitive Electricity Supplier’s energy rate specified in the agreement between the customer-generator and the Competitive Electricity Supplier. The Competitive Electricity Supplier shall be responsible for calculating the net energy bill (or credit) amount for each billing period.

902.2 For customer-generators purchasing generation and transmission service from a Competitive Electricity Supplier, if the customer-generator’s kilowatt-hour usage during the billing period exceeds the kilowatt-hours generated by the customer-generator during that period, the customer-generator will be billed for the net energy delivered by the Electric Company at the full retail distribution rate for distribution service. In no event shall distribution-related usage charges be applied to the kilowatt-hours generated by the customer's net metering facility.

902.3 For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts, if the electricity generated during the billing period by the customer-generator’s facility exceeds the customer-generator’s kWh usage during the billing period (excess generation), the customer-generator’s next bill will be credited by the Electric Company for the excess generation at the full retail distribution rate. The credit for excess generation shall be expressed as a dollar value on the customer-generator’s bill. If the full credit for excess generation is not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted. In no event shall such distribution-related compensation for excess generation

apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

- 902.4 Net energy billing applies only to kilowatt-hour usage charges. Net energy billing customers are responsible for all other charges applicable to the customer's rate class and recovered through fixed amounts or over units other than kilowatt-hours, including customer and/or demand charges, as applicable.

903 NET ENERGY BILLING AND CREDITING FOR SOS CUSTOMERS

- 903.1 This section governs the billing practices applicable to participating net energy billing customers receiving SOS generation service during a billing period. In no event shall transmission or distribution-related usage charges be applied to the kilowatt-hours generated by the customer's net metering facility.
- 903.2 If the value of the generation (generation value) used to supply the customer's usage exceeds the generation value of the electricity generated by the customer's net metering facility during the billing period, the customer-generator will be billed for the difference between the generation value of the energy consumed and the energy supplied.
- 903.3 For a customer-generator with an electric generating facility that has a capacity less than or equal to 1,000 kilowatts, if the generator value of the electricity generated by the customer's net metering facility exceeds the generation value of the electricity used to supply the customer's usage during the billing period, the customer-generator's next bill will be credited for the difference between the generation value of the energy supplied and the energy consumed. The credit for the difference in generation value shall be expressed as a dollar value on the customer-generator's bill. If the full credit is not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted.
- 903.4 If the customer's kWh usage exceeds the electricity generated by the customer's net metering facility during the billing period, the customer-generator will be billed transmission and distribution related usage charges on the net energy supplied to the customer during the billing period.
- 903.5 For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts, if the electricity generated during the billing period by the customer-generator's facility exceeds the customer-generator's kWh usage during the billing period (excess generation), the customer-generator's next bill will also be credited for the excess generation at the full retail rate for transmission and distribution service applicable during the billing period in which the excess generation occurred. The credit for excess generation shall be

expressed as a dollar value on the customer-generator's bill. If the sum of the full transmission and distribution credit for excess generation and the generation value credit is not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted. In no event shall such transmission- and distribution-related compensation for excess generation apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

- 903.6 Net energy billing applies only to kilowatt-hour usage charges. Net energy billing customers are responsible for all other charges applicable to the customer's rate class and recovered through fixed amounts or over units other than kilowatt-hours, including customer, demand and/or minimum charges, as applicable.

904 NET METERING-RELATED EQUIPMENT

- 904.1 The metering equipment installed for net energy metering shall be capable of measuring the flow of electricity in two directions.

- 904.2 Nothing in this section shall prohibit the Electric Company from installing additional meters to separately record electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and supplied to the electric grid by the eligible customer-generator. However, no customer-generator that elects to be billed on a net energy basis shall be charged directly for the cost of the additional meters or other necessary equipment.

905 STANDARD CONTRACT

- 905.1 The Electric Company shall develop a standard contract that implements these rules, which shall be subject to the review and approval of the Commission. Such standard contract shall be consistent with the provisions of this chapter, as well as with the Energy Policy Act of 2005 and the Commission's Interconnection Rules under Chapter 40 of Title 15 of the DCMR.⁵

906 WAIVER

- 906.1 Upon request of any person subject to this chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this chapter that is not required by statute or inconsistent with the purposes of this chapter.

⁵ Energy Policy Act of 2005, Pub.L. 109-58, 119 Stat. 594 (2005); *F.C. 1050, 56 D.C. Reg.* 001415-001487 (February 13, 2009) to be codified as 15 D.C.M.R. Chapter 40, District of Columbia Small Generator Interconnection Rules ("DCSGIR").

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DEFINITIONS

When used in this chapter; the following terms and phrases shall have the following meaning:

“Capacity” means the maximum output, expressed in kilowatts, of an electric generator under specific conditions designated by the manufacturer, as indicated on a nameplate physically attached to the generator.

“Commission” means the Public Service Commission of the District of Columbia.

“Competitive Electricity Supplier” means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale or retail customers: The term excludes the following: (A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants; (B)(1) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or (2) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, or who does not: (a) Take title to the electricity; (b) Market electric services to the individually-metered tenants of his or her building; or (c) Engage in the resale of electric service to others; (C) Property owners who supply small amounts of power, at cost, as accommodation to lessors or licensees of the property; and (D) A consolidator.

“Customer-generator” means a residential or commercial customer that owns (or leases or contracts) and operates an electric generating facility that: (a) has a capacity of not more than 1000 kilowatts; (b) uses renewable resources, cogeneration, fuel cells, or microturbines; (c) is located on the customer's premises; (d) is interconnected with the Electric Company's transmission and distribution facilities; and (e) is intended primarily to offset all or part of the customer's own electricity requirements.

“Electric Company” means the company that provides distribution service.

“Eligible customer-generator” means a customer-generator whose net energy metering system for renewable resources, cogeneration, fuel cells, and microturbines meets all applicable safety and performance standards.

“Full Retail Distribution Rate” means the per kilowatt-hour distribution charges applicable to the net energy billing customer during the billing period.

“Full Retail Transmission Rate” means the per kilowatt-hour transmission charges applicable to the net energy billing customer during the billing period.

“Generation value” means the product of the applicable SOS kilowatt-hour rate times the number of kilowatt-hours consumed and/or supplied, during the time period(s) associated with such usage and/or supply.

“Net energy metering” means the difference between the kilowatt-hours consumed by a customer-generator and the kilowatt-hours generated by the customer-generator’s facility over any time period determined as if measured by a single meter capable of registering the flow of electricity in two directions.

“Net energy billing” means a billing and metering practice under which a customer-generator is billed on the basis of net energy over the billing period.

“Standard Offer Service Provider” means a provider of standard offer service chosen pursuant to Chapter 29 of the Commission's rules.

2. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments and reply comments not later than thirty (30) and forty-five (45) days respectively, after publication of this notice in the *D.C. Register* with Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor West Tower, Washington, D.C. 20005. If interested parties wish to have their previously filed comments considered by the Commission as applicable to this rulemaking, they should file a statement accordingly. Copies of the proposed rules may be obtained, at cost, by writing the Commission Secretary at the above address.