

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 (2016 Repl. & 2018 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) (2018 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 910, entitled “Medicaid-Reimbursable Telemedicine Services,” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This rule proposes emergency changes to the standards governing Medicaid reimbursement of health services provided via telemedicine to allow the District to ensure the accessibility of services to Medicaid beneficiaries if the risk of coronavirus disease (COVID-19) in the District requires quarantine of beneficiaries or providers become inaccessible. DHCF is proposing policy changes to maintain accessibility of services, including allowing services to be provided through telemedicine in a beneficiary’s home on a temporary basis, establishing the requirements for technology to home-related telemedicine services, and making changes necessary to ensure that this service modality is available to Medicaid managed care beneficiaries.

DHCF is proposing the addition of the beneficiary’s home as the originating site because telemedicine provides a service delivery pathway that will help ensure beneficiaries continue to receive health services even if they are unable to access traditional in-person Medicaid services because of their health condition or ability to travel. DHCF is proposing removal of the reference to “fee-for-service” because the standards set forth in this section, and any corresponding requirements set forth under the terms of the managed care contract, should also inform minimum program requirements implemented under District Medicaid managed care program. Finally, DHCF is proposing clarification that distant site providers are responsible for ensuring that technology in use meets the standard of care when the beneficiary’s home is the originating site.

To this end, the rule includes three specific amendments: (1) the addition of a beneficiary’s home as an authorized originating site in subsection 910.7; (2) the removal of the reference to the fee-for-service program in subsection 910.1; and (3) a clarification in new subsection 910.30 that when the originating site is the beneficiary’s home that the distant site provider is responsible for ensuring that the technology in use meets the minimum requirements set forth in subsection 910.3.

DHCF is proposing these originating site changes on a time-limited basis in response to COVID-19, but is interested in receiving comments from District stakeholders on whether DHCF should consider adding the beneficiary’s home as an originating site as a permanent change in future.

Regarding the proposed home as originating site changes, DHCF anticipates that some beneficiaries will access services provided via telemedicine using a smartphone or other consumer electronic devices. Most smartphones or tablets operating on either of the major cellular networks meet the video quality and latency requirements set forth in this section. Importantly, providers should note that the addition of the home as an authorized originating site does not alter patient consent requirements set forth in this section, nor does it alter the ongoing requirement that care be delivered in a manner that is compliant with the Health Insurance Portability and Accountability Act and other applicable laws. DHCF reserves the authority to provide additional guidance to support HIPAA compliance in the telemedicine context as needed. Any guidance will be made available on the DHCF website at www.dhcf.dc.gov.

This rulemaking is set forth on an emergency and proposed basis. Emergency action is necessary to ensure the health, safety, and welfare of residents is not threatened by a lapse of in-person access to qualified practitioners of covered healthcare services due to the threat of infection with COVID-19.

This Emergency and Proposed rulemaking was adopted on March 10, 2020 and shall become effective immediately. The rules will be subsequently published in the *D.C. Register* and will remain in effect for one hundred and twenty (120) days or until July 8, 2020, 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 rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsection 910.1 is amended to read as follows:

910.1 The purpose of this section is to establish the Department of Health Care Finance (DHCF) standards governing eligibility for Medicaid beneficiaries receiving healthcare services via telemedicine under the Medicaid program, and to establish conditions of participation for providers who deliver healthcare services to Medicaid beneficiaries via telemedicine.

Subsection 910.7 is amended to read as follows:

910.7 An originating site provider shall consist of the following provider types:

- (a) Hospital;
- (b) Nursing Facility;
- (c) Federally Qualified Health Center (FQHC);

- (d) Clinic;
- (e) Physician Group/Office;
- (f) Nurse Practitioner Group/Office;
- (g) DCPS;
- (h) DCPCS;
- (i) Mental Health Rehabilitation Service (MHRS) provider, Adult Substance Abuse Rehabilitation Service (ASARS) provider, and Adolescent Substance Abuse Treatment Expansion Program (ASTEP) provider certified by the Department of Behavioral Health (DBH) and eligible to provide behavioral health services set forth under the District of Columbia Medicaid State Plan (State Plan); and
- (j) Effective March 10, 2020 and ending July 8, 2020, the beneficiary's home or other settings identified in guidance published on the DHCF website at dhcf.dc.gov.

Subsection 910.30 is amended to read as follows:

910.30 When a beneficiary's home is the originating site, the distant site provider shall ensure the technology in use meets the minimum requirements set forth in Subsection 910.13.

Comments on this proposed rulemaking shall be submitted in writing to Melisa Byrd, Medicaid Director, Department of Health Care Finance, 441 4th Street, N.W., 9th Floor, Washington, DC 20001, via email to DHCFPublicComments@dc.gov, online at www.dcregs.dc.gov, or by telephone to (202) 442-8742, within thirty (30) days after the date of publication of this notice in the D.C. Register or online at DHCF's website. Additional copies of these rules may be obtained from the above address.