

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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.)), 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 final rules establish standards governing reimbursement of skilled nursing services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

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. The corresponding 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; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. The most recent Notice of Final Rulemaking for 29 DCMR § 1929 (Skilled Nursing Services) was published in the *D.C. Register* on March 28, 2014 – Part 1, at 61 DCR 002615. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 21, 2015, at 62 DCR 011659. The emergency and proposed rulemaking was adopted on August 13, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 11, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made to the emergency and proposed rulemaking. These rules amend the previously published rules by: (1) changing the schedule for required updates from sixty (60) days to quarterly, or as needed; (2) changing the requirements for contents of progress notes; (3) eliminating the responsibility for completing quarterly reports from the licensed practical nurse (LPN); (4) eliminating the requirement that nurses providing this service meet the requirements for Direct Support Professionals; (5) allowing the service to be provided with Supported Living and Supported Living with Transportation, but not Supported Living with Skilled Nursing; and (6) increasing the rate for LPN visits.

The Director of DHCF adopted these rules as final on November 16, 2015, and they shall become effective on 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:

Section 1931, SKILLED NURSING SERVICES, is amended in its entirety to read as follows:

1931 SKILLED NURSING SERVICES

1931.1 The purpose of this section is to establish standards governing Medicaid eligibility for skilled nursing services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of skilled nursing services.

1931.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers.

1931.3 To be eligible for Medicaid reimbursement, the person shall first exhaust all available skilled nursing visits provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving skilled nursing services under the Waiver.

1931.4 To be eligible for Medicaid reimbursement, the person shall have a condition of circulatory or respiratory function complications, gastrointestinal complications, neurological function complications, or the existence of another severe medical condition that requires monitoring or care at least every other hour.

1931.5 To be eligible for Medicaid reimbursement, skilled nursing services shall:

- (a) Be ordered by a physician when it is reasonable and necessary to the treatment of the person's illness or injury, and include a letter of medical necessity, a summary of the person's medical history and the duties that the skilled nurse would perform; and a skilled nurse checklist; and
- (b) Be authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care after all Medicaid State Plan skilled nursing visits have been exhausted.

- 1931.6 The physician's order described in Subsection 1931.5 shall include the scope, frequency, and duration of skilled nursing services; shall be updated at least every ninety (90) calendar days; and shall be maintained in the person's records.
- 1931.7 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse (RN) delivering skilled nursing services shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the District of Columbia Municipal Regulations (DCMR). They may include, at a minimum, but are not limited to the following duties:
- (a) Performing a nursing assessment in accordance with the Developmental Disabilities Administration's Health and Wellness Standards;
 - (b) Assisting in the development of the Health Care Management Plan (HCMP);
 - (c) Coordinating the person's care and referrals;
 - (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements in the jurisdiction where services are provided;
 - (e) Administering medication or oversight of licensed medication administration personnel;
 - (f) Providing oversight and supervision to the licensed practical nurse (LPN), when delegating and assigning nursing interventions;
 - (g) Providing updates to Department on Disability Services (DDS) quarterly and more frequently as needed, if there are any changes to the person's needs or physician's order;
 - (h) Training the person, licensed practical nurse (LPN), family, caregivers, and any other individual, as needed; and
 - (i) Recording progress notes during each visit that meet standards of nursing care and include the following:
 - (1) Any unusual health or behavioral events or changes in status;
 - (2) Any matter requiring follow-up on the part of the service provider or DDS; and
 - (3) Clearly written records that contain a statement of the person's progress or lack of progress, medical conditions, functional losses,

and treatment goals that demonstrate that the person's services are and continue to be reasonable and necessary.

- (j) Submit summary notes at least quarterly and submit quarterly reports in accordance with the requirements in Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.
- 1931.8 In order to be eligible for Medicaid reimbursement, the duties of an LPN delivering skilled nursing services shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 DCMR. They may include, at minimum, but are not limited to the following duties:
- (a) Immediately reporting, any changes in the person's condition, to the supervising registered nurse;
 - (b) Providing wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
 - (c) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia. If services are provided in another jurisdiction, the services shall be consistent with that jurisdiction's requirements.
- 1931.9 Medicaid reimbursable skilled nursing services shall be provided by an RN or LPN under the supervision of an RN, in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 DCMR.
- 1931.10 In order to be eligible for Medicaid reimbursement, each person providing skilled nursing services shall be employed by a home health agency that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services.
- 1931.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1931.12 To be eligible for Medicaid reimbursement, skilled nursing services shall have prior authorization from DDS.
- 1931.13 In order to be eligible for Medicaid reimbursement, the RN shall monitor and supervise the provision of services provided by the licensed practical nurse, including conducting a site visit at least once every thirty (30) days, or more frequently, if specified in the person's ISP.

- 1931.14 In order to be eligible for Medicaid reimbursement, each provider shall maintain records pursuant to the requirements described under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) under Chapter 19 of Title 29 DCMR.
- 1931.15 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall ensure that the LPN receives ongoing supervision and that the service provided is consistent with the person's ISP.
- 1931.16 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least quarterly.
- 1931.17 The skilled nursing provider shall maintain a contingency plan that describes how skilled nursing will be provided when the scheduled nurse is unavailable; and, if the lack of immediate care poses a serious threat to the person's health and welfare, how the service will be provided when back-up staff are unavailable.
- 1931.18 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirements:
- (a) The person has exhausted all nursing visits allowable under the Medicaid State Plan;
 - (b) DDS provides a written service authorization before the commencement of services;
 - (c) The service name and home health agency delivering services must be identified in the ISP and Plan of Care;
 - (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
 - (e) Services shall not conflict with the service limitations described under Subsection 1931.20.
- 1931.19 Medicaid reimbursement for skilled nursing services is only available for individuals who live independently in their natural homes, and people who receive the following residential supports: Host Homes; Supported Living; and Supported Living with Transportation. Skilled nursing services shall not be available when provided with Residential Habilitation or when Supported Living or Supported Living with Transportation is billed using the rate that includes direct skilled nursing services.
- 1931.20 Medicaid reimbursement is not available under the Waiver for skilled nursing visits that exceed fifty-two (52) visits per person annually.
- 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 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 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 services shall be developed using the following two (2) rate structures:
- (a) Skilled nursing services rate; and
 - (b) Extended skilled nursing services rate.
- 1931.24 The Medicaid reimbursement rate for skilled nursing services shall be sixty-five dollars (\$65.00) per visit for services provided by an RN or LPN for four (4) hours or less in duration. The Medicaid reimbursement rate for extended RN visits shall be thirty-two dollars (\$32.00) per hour or eight dollars (\$8.00) per fifteen minutes for extended RN visits for four (4) hours or less in duration. The Medicaid reimbursement rate for extended LPN visits shall be twenty-two dollars (\$22.00) per hour or five dollars and fifty cents (\$5.50) per fifteen minutes for extended visits for four (4) hours or less in duration.
- 1931.25 A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.