

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; Pub. L. 90-227, D.C. Official Code § 1-307.02 (2012 Repl. & 2013 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) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Chapter 65 (Medicaid Reimbursement to Nursing Facilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Pursuant to Section 6508, entitled "Final Per Diem Rate Calculation," each nursing facility located in the District of Columbia participating in the Medicaid program is reimbursed on a prospective basis, at a facility-specific per diem rate. This rate is calculated by establishing a base year per diem rate for each facility, adjusted semi-annually for case-mix, adjusted annually for inflation, and subject to other adjustments. Effective January 1, 2011, an amendment to the State Plan eliminated the annual inflation adjustment in order to create budget savings.

On July 30, 2013, the Council of the District of Columbia (Council), through the Medical Assistance Program Emergency Amendment Act of 2013 (D.C. Act 20-130; 60 DCR 11384), approved the submission of a State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to reinstate the annual inflation adjustment for nursing facility per diem rates, which included minor clarifications of the formula for calculating the annual inflation adjustment from January 1, 2006 to the present to reflect actual accounting practices. The SPA was approved by the CMS on January 24, 2014 with an effective date of October 1, 2013.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 27, 2013 at 60 DCR 013421, and a Notice of Second Emergency and Proposed Rulemaking was published on January 31, 2014 at 60 DCR 000877. No comments were received and no substantive changes were made.

The Director adopted these rules as final on March 26, 2014 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 6508 (FINAL PER DIEM RATE CALCULATION) of Chapter 65 (MEDICAID REIMBURSEMENT TO NURSING FACILITIES) of Title 29 (PUBLIC WELFARE) of the DCMR is amended by amending Subsection 6508.1 to read as follows:

6508.1 Each nursing facility's per diem rate effective January 1, 2006 shall be the sum of Subparagraphs (a), (b), and (c) as set forth below:

- (a) The nursing and resident care base year cost per diem, which shall be calculated as follows:

- (1) Effective January 1, 2006, through September 30, 2007, the nursing and resident care base year cost per diem established pursuant to Section 6505, adjusted for inflation to March 30, 2003, using the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (CMS Index).
 - (2) Effective October 1, 2007, through September 30, 2008, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(1), adjusted for inflation using the CMS Index for District Fiscal Years 2006, 2007, and 2008.
 - (3) Effective October 1, 2008, through September 30, 2009, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(2), adjusted for inflation using the CMS Index.
 - (4) Effective October 1, 2009 through December 31, 2010, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(3), adjusted for inflation using the CMS Index.
 - (5) Effective January 1, 2011 through September 30, 2013, the annual inflation adjustment shall be eliminated.
 - (6) Effective October 1, 2013, the nursing and resident care base year cost per diem calculated pursuant to Subsection 6508.1(a)(4), shall be annually adjusted for inflation using the CMS Index. This inflation adjustment shall not apply or be calculated for the period in which the inflation adjustment was eliminated in Subsection 6508.1(a)(5).
- (b) The routine and support base year cost per diem, which shall be calculated as follows:
- (1) Effective January 1, 2006, through September 30, 2007, the routine and support base year per diem established pursuant to Section 6506, adjusted for inflation to March 30, 2003, using the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (CMS Index).
 - (2) Effective October 1, 2007, through September 30, 2008, the routine and support base year cost per diem calculated pursuant to Subsection 6508.1(b)(1), indexed for inflation using the CMS Index.

- (3) Effective October 1, 2008, through September 30, 2009, the routine and support base year cost per diem calculated pursuant to Subsection 6508.1(b)(2), adjusted for inflation using the CMS Index.
 - (4) Effective October 1, 2009 through December 2010, the routine and support base year cost per diem calculated according to Subsection 6508.1(b)(3), adjusted for inflation using the CMS Index.
 - (5) Effective January 2011 through September 30, 2013, the annual inflation adjustment is eliminated.
 - (6) Effective October 1, 2013, the routine and support base year cost per diem calculated pursuant to Subsection 6508.1(b)(4), shall be annually adjusted for inflation using the CMS Index. This inflation adjustment shall not apply or be calculated for the period in which the inflation adjustment was eliminated in Subsection 6508.1(b)(5).
- (c) The capital-related base year cost per diem, which shall be calculated as follows:
- (1) Effective January 1, 2006, through September 30, 2007, the capital-related base year cost per diem established pursuant to Section 6507 adjusted for inflation to March 30, 2003, using the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (CMS Index). The inflation adjustment in this subparagraph shall not be applied to depreciation, amortization, and interest on capital related expenditures.
 - (2) Effective October 1, 2007, through September 30, 2008, the capital-related base year cost per diem calculated pursuant to Subsection 6508.1(c)(1) adjusted for inflation using the CMS Index for District Fiscal Years 2006, 2007, and 2008. The inflation adjustment in this subparagraph shall not be applied to depreciation, amortization and interest on capital related expenditures.
 - (3) Effective October 1, 2008, through September 30, 2009, the capital-related base year cost per diem calculated pursuant to Subsection 6508.1(c)(2) adjusted for inflation using the CMS Index. The inflation adjustment in this subsection shall not be applied to depreciation, amortization and interest on capital related expenditures.

- (4) Effective October 1, 2009 through December 31, 2010, the capital-related base year cost per diem calculated pursuant to Subsection 6508.1(c)(3) adjusted for inflation using the CMS Index. The inflation adjustment in this subsection shall not be applied to depreciation, amortization and interest on capital-related expenditures.
- (5) Effective January 2011 through September 30, 2013, the annual inflation adjustment is eliminated.
- (6) Effective October 1, 2013, the capital-related base year cost per diem calculated pursuant to Subsection 6508.1(c)(4), shall be annually adjusted for inflation using the CMS Index. This inflation adjustment shall not apply or be calculated for the period in which the inflation adjustment was eliminated in Subsection 6508.1(c)(5). The inflation adjustment in this subsection shall not be applied to depreciation, amortization and interest on capital-related expenditures.