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State/Territory Name: District of Columbia

State Plan Amendment (SPA) #: 16-010

This file contains the following documents in the order listed:

1) Approval Letter
2) CMS 179
3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
150 S. Independence Mall West
Suite 216, The Public Ledger Building
Philadelphia, Pennsylvania 19106-3499

Region III/Division of Medicaid and Children's Health Operations

SWIFT # 100420164081

November 29, 2017

Claudia Schlosberg, J.D.
Senior Deputy Director/State Medicaid Director
Department of Health Care Finance
441 4th Street, N.W., Suite 900 South
Washington, D.C. 20001

Dear Ms. Schlosberg:

I am writing to inform you that we have reviewed the District of Columbia's State Plan Amendment (SPA) #16-010 entitled, Private Duty Nursing Services. This SPA proposes to allow the District to provide nursing services for technology-dependent beneficiaries who require more individualized and continuous care than is available from a visiting nurse under the Skilled Nursing Home Health Services benefit or routinely provided by the nursing staff of a hospital or skilled nursing facility. This SPA also proposes changes to establish a rate methodology for Private Duty Nursing Services that will enable the District to increase the rates for Skilled and Private Duty Nursing Services.

We are pleased to inform you that, after extensive review, this amendment is approved; its effective date is October 1, 2017. A copy of the approved SPA pages and signed CMS-179 form are included under this cover.

If you have any further questions regarding this SPA, please contact LCDR Frankeena Wright at 215-861-4754 or by email at Frankeena.Wright@cms.hhs.gov.

Sincerely,

Francis T. McCullough
Associate Regional Administrator

cc: Alice Weiss, DHCF
Sabrina Tillman Boyd, CMS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: **16-010**

2. STATE: **District of Columbia**

3. PROGRAM IDENTIFICATION: **Title XIX of the Social Security Act**

TO: Regional Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services

4. PROPOSED EFFECTIVE DATE: **October 1, 2017**

5. TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION:
42 USC §1396a(a)(10)(D)
42 CFR §440.70

7. FEDERAL BUDGET IMPACT:
a. FFY17: ($1,311,107)
b. FFY18: ($1,466,056)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
- **Supplement 1 to Attachment 3.1-A, Pages 10-10e**
- **Supplement 1 to Attachment 3.1-B, Pages 9-9e**
- **Attachment 4.19-B Part 1, Pages 4a-4b, 4e**

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:
- **Supplement 1 to Attachment 3.1-A, Pages 10-10f**
- **Supplement 1 to Attachment 3.1-B, Pages 9-9f**
- **Attachment 4.19-B Part 1, Pages 4a-4c**

10. SUBJECT OF AMENDMENT:

Private Duty Nursing Services

11. GOVERNOR'S REVIEW *(Check One)*
☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☒ OTHER, AS SPECIFIED:
D.C. Act: 21-148

12. SIGNATURE OF STATE AGENCY OFFICIAL

13. TYPED NAME
Claudia Schlosberg J.D.

14. TITLE
Senior Deputy Director/Medicaid Director

15. DATE SUBMITTED September 30, 2016

16. RETURN TO

Claudia Schlosberg, J.D.
Senior Deputy Director/Medicaid Director
Department of Health Care Finance
441 4th Street, NW, 9th Floor, South
Washington, DC 20001

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED September 30, 2016

18. DATE APPROVED **November 29, 2017**

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL October 1, 2017

20. SIGNATURE OF REGIONAL OFFICIAL

21. TYPED NAME Francis McCullough

22. TITLE Associate Regional Administrator

8. Private Duty Nursing Services are for the purpose of providing more individualized and continuous care than is available from a visiting nurse under the Skilled Nursing Home Health Services benefit or routinely provided by nursing staff of a hospital or skilled nursing facility.

A. Eligibility: In order to be eligible for Medicaid reimbursement, Private Duty Nursing services shall be ordered by a physician upon verification that the services are medically necessary, as described in District regulation, and provided in accordance with a plan of care developed by a Registered Nurse (R.N.).

B. Plan of Care: Private Duty Nursing services shall be provided pursuant to a written plan of care. The plan of care must be developed and signed and dated by a R.N. who is employed or under contract to the Private Duty Nursing services provider. The signature of the R.N. on the plan of care constitutes a certification that the plan of care accurately reflects the health status and needs of the beneficiary and that the services identified in the plan of care are in accordance with the physician's order. The beneficiary's physician shall approve the initial plan of care by signing and dating it within thirty (30) days of the development of the plan of care and noting his or her license number and National Provider Identification (NPI) number on the plan of care. The plan of care shall be reviewed and signed and dated by the physician every sixty (60) calendar days.

C. Face-to-Face Encounters - Ordering Physician Requirements: Effective October 1, 2016, the ordering physician for any Private Duty Nursing services shall:

(1) Document that a face-to-face encounter related to the primary reason the beneficiary requires Private Duty Nursing services occurred between the beneficiary and the health practitioner within the ninety (90) days before or within the thirty (30) days after the start of services; and

(2) Indicate on the order the practitioner who conducted the face-to-face encounter, and the date of the encounter.

D. Face-to-Face Encounters- Qualified Practitioners: A face-to-face encounter may be conducted by one of the following providers:

(1) The ordering physician;

(2) A nurse practitioner working in collaboration with the physician;

(3) A certified nurse mid-wife as authorized under District law;

(4) A physician assistant acting under the supervision of the ordering physician; or

(5) For beneficiaries receiving Home Health services immediately after an acute or post-acute stay, the attending acute or post-acute physician

E. Providers: Private Duty Nursing services shall be provided by a Home Care Agency that meets the following requirements:

(1) Be enrolled as a Medicare Home Care Agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 C.F.R. § 484 *et seq.*;

(2) Have sufficient funds or "initial reserve operating funds" available for business expenses determined in accordance with federal special capitalization requirements for Home Care Agencies participating in Medicare as set forth under 42 C.F.R. § 489.28;

(3) Meet the District of Columbia Department of Health licensure requirements in accordance with District regulations;

(4) Be enrolled as a Medicaid provider of Private Duty Nursing services and meet all requirements as set forth under District regulations;

(5) Except for government-operated Home Care Agencies, obtain a surety bond, in accordance with federal and District requirements for Home Care Agencies, as set forth under 42 C.F.R. § 441.16 and District regulations, and furnish a copy of such bond to DHCF;

(6) A Home Care Agency shall accept a ventilator-dependent beneficiary only if:

(a) The beneficiary is ventilator stabilized;

(b) A successful home equipment trial has been conducted by the Home Care Agency provider; and

(c) The Home Care Agency has developed a plan for emergency services notification.

F. Scope of Services: Private Duty Nursing services shall be provided by a licensed R.N. or L.P.N. licensed in accordance with District law and implementing rules. The duties of a R.N. or L.P.N. shall include, but not be limited to, the following:

(1) Conducting initial assessments either prior to service provision or at the onset of care and periodic reassessments every sixty (60) calendar days to develop and update a plan of care;

(2) Coordinating the beneficiary's care and referrals among all Home Care Agency providers;

(3) Implementing preventive and rehabilitative nursing procedures;

(4) Administering medications and treatment as prescribed by a physician licensed in accordance with District law, as outlined under the plan of care;

(5) Recording daily progress notes and summary notes at least once every sixty (60) calendar days;

(6) Making necessary updates to the plan of care, and reporting any changes in the beneficiary's condition to his or her physician;

(7) Instructing the beneficiary on treatment regimens identified under the plan of care;

(8) Updating the physician on changes in the beneficiary's condition and obtaining orders to implement those changes; and

(9) For R.N.s who supervise nursing services delivered by skilled nurses, duties shall include, at minimum, the following:

(a) Supervising the beneficiary's skilled nurse on site, at least once every sixty (60) calendar days or more frequently if specified in the plan of care;

(b) Ensuring that Private Duty Nursing services provided by a L.P.N. are supervised consistent with District regulations;

(c) Conducting the initial assessment and evaluation and certifying in writing that the assessment is true and accurate;

(d) Ensuring that new or revised physician orders have been obtained from the treating physician initially, as needed, and every sixty (60) calendar days thereafter, to promote continuity of care;

(e) Reviewing the beneficiary's plan of care;

(f) Monitoring the beneficiary's general health outcomes, including taking vital signs, conducting a physical examination, and determining mental status;

(g) Determining if the beneficiary has any unmet needs;

(h) Ensuring that all home health services are provided safely and in accordance with the plan of care;

(i) Ensuring that the beneficiary has received education on any needed services;

(j) Ensuring the safe discharge or transfer of the beneficiary;

(k) Ensuring that the physician receives progress notes when the beneficiary's health condition changes, or when there are deviations from the plan of care;

(l) Ensuring that a summary report of the visit has been sent to the physician every sixty (60) calendar days; and

(m) Reporting any instances of abuse, neglect, exploitation or fraud to DHCF to promote a safe and therapeutic environment in accordance with District regulations;

(10) Maintaining the beneficiary's equipment and supplies;

(11) Providing ventilator and/or tracheostomy tube maintenance;

(12) Ensuring that progress notes taken during each visit shall meet the standards of nursing care established under District regulations and including notations regarding the following:

(a) Any unusual health or behavioral events or changes in status;

(b) Any matter requiring follow-up on the part of the service provider or DHCF; and

(c) A clearly written statement of the beneficiary's progress or lack of progress, medical conditions, functional losses, and treatment goals as outlined in the plan of care that demonstrates that the beneficiary's services continue to be reasonable and necessary.

(13) Applying independent emergency measures to counteract adverse developments; and

(14) Updating the physician on changes in the beneficiary's condition and obtaining orders to implement those changes.

G. Amount and Duration of Services: Private Duty Nursing services may be provided up to twelve (12) hours per day with a prior authorization issued by DHCF. The twelve (12) hour per day limit on Private Duty Nursing Services may be exceeded based on medical necessity, determined in accordance with applicable District regulations.

H. Prior Authorization: All requests for Private Duty Nursing services must be prior authorized by DHCF or its designee, in accordance with applicable District regulations.

I. Service Delivery Limitations: Private Duty Nursing services shall have the following service limitation:

(1) Assessments, reassessments or supervisory visits of a skilled nurse or aide shall not be included in the calculation of the daily Private Duty Nursing cap;

(2) When a private duty nurse performs the duties described in this Supplement during an initial assessment or reassessment, these services shall not be billed separately as Private Duty Nursing services under the twelve (12) hour daily cap, but shall be included as part of the rate paid for an initial assessment or reassessment;

(3) When a private duty nurse is providing personal care aide services, the services shall be billed and reimbursed as personal care aide services; and

(4) A beneficiary shall not concurrently receive Private Duty Nursing and Skilled Nursing services under the State Plan.

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(4) Administering medications and treatment as prescribed by a physician licensed in accordance with District law, as outlined under the plan of care;

(5) Recording daily progress notes and summary notes at least once every sixty (60) calendar days;

(6) Making necessary updates to the plan of care, and reporting any changes in the beneficiary's condition to his or her physician;

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(l) Ensuring that a summary report of the visit has been sent to the physician every sixty (60) calendar days; and

(m) Reporting any instances of abuse, neglect, exploitation or fraud to DHCF to promote a safe and therapeutic environment in accordance with District regulations;

(10) Maintaining the beneficiary's equipment and supplies;

(11) Providing ventilator and/or tracheostomy tube maintenance;

(12) Ensuring that progress notes taken during each visit shall meet the standards of nursing care established under District regulations and including notations regarding the following:

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(3) When a private duty nurse is providing personal care aide services, the services shall be billed and reimbursed as personal care aide services; and

(4) A beneficiary shall not concurrently receive Private Duty Nursing and Skilled Nursing services under the State Plan.

7a. PRIVATE DUTY NURSING SERVICES

Private Duty Nursing services and provider qualifications are outlined per Attachment 3.1A, Supplement 1, page 10 and Attachment 3.1B, Supplement 1, page 9. Reimbursement for Private Duty Nursing Services shall be based on a prospective payment basis established by the State Medicaid Agency in accordance with the reimbursement methodologies outlined in this section. For all services provided, the reimbursement will be the lesser of the amount derived from the methodology below, or the amount charged by the provider.

Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of Private Duty Nursing Services. The agency's fee schedule rate was set as of October 1, 2017, and is effective for services provided on or after that date. All rates are published on the agency's website at: http://www.dc-medicaid.com.

Inflation Adjustment

Effective October 1, 2017 and annually thereafter, the reimbursement rates for Private Duty Nursing Services shall be adjusted annually by the Medicare Economic Index factor for skilled nursing published by the Centers for Medicare and Medicaid Services.

Administrative Add-ons

The following administrative expense add-ons are included in computing the rate amounts for Private Duty Nursing Services:

- 11% Employee Taxes – This is comprised of the Social Security (6.2%), Medicare (1.45%), Workers Compensation (2%) and Unemployment Benefits (1.18%)
- 8% Employee Benefits – Medical Insurance and Sick Leave Provision
- 18% - Provider Administrative overhead, based on the reviewed Fiscal Year (FY) 2013 cost reports filed by Home Health Agencies for Private Duty Nursing Services

A. Reimbursement Methodology

The reimbursement methodology is designed to ensure that the rates adequately support the unique program requirements for Private Duty Nursing services and ensure access to these services. There are three (3) distinct Private Duty Nursing rates: (1) assessments and supervisory nurse visits; (2) Private Duty Nursing services provided by a Registered Nurse (R.N.); and (3) Private Duty Nursing services provided by a Licensed Practical Nurse (L.P.N.).

1) Assessments and Supervisory Nurse Visits

The reimbursement rate for initial assessments, reassessments, and supervisory nurse visits is a flat per visit rate and it is derived by dividing the total annual R.N. cost by the average annual work hours multiplied by a factor of two. The annual cost of an R.N. includes: the average annual wages/salary paid to a R.N. plus administrative add-ons stated above.

Based on available salary data obtained from the Bureau of Labor and Statistics, Occupational Employment and Wages, for May 2016, the average annual salary for an R.N. in the District of Columbia is $80,500.

The average annual work hours equals the typical 2080 full time work hours less the 88 federal holiday hours, sick leave, vacation time and the District's mandatory continuing professional education hours. Further based on information provided by DHCF program staff and inquiries with providers, the duration of the initial assessment and supervisory visit is reasonably estimated to be two hours per visit.

Formula

Annual R.N. Salary + Administrative Add-ons X 2 hours
(Average Annual Work Hours)

2) Private Duty Nursing Visits by an R.N. or L.P.N.

The reimbursement rate is an hourly rate computed by dividing the total annual cost of either an R.N. or L.P.N. by the average annual work hours. The annual cost of an R.N. or L.P.N. includes: the average annual wages/salary paid to an R.N. or L.P.N. plus administrative add-ons stated above.

Based on available salary data obtained from the Bureau of Labor and Statistics, Occupational Employment and Wages, for May 2016, the average annual salary for a R.N. and L.P.N. in the District of Columbia are $80,500 and $55,200 respectively.

Formula

Annual R.N. or L.P.N. Salary + Administrative Add-ons
(Average Annual Work Hours)