DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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 (2012 Repl. & 2013 Supp.)) 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) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 903 of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Outpatient and Emergency Room Services."

The effect of these emergency and proposed rules is to provide supplemental payments to hospitals located within the District of Columbia that participate in the Medicaid program for outpatient hospital services.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance (State Plan) requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS). The State Plan amendment has been approved by the Council through the Medical Assistance Program Emergency Amendment Act of 2013, signed July 30, 2013 (D.C. Act 20-130; 60 DCR 11384) and is awaiting approval by CMS. These rules are contingent upon approval by CMS of the corresponding State Plan amendment.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 26, 2013 at 60 DCR 006236. Comments were received and two non-substantive technical changes were made. The first change clarifies that the additional payment adjustment for private children's hospitals is made on an annual basis. The second change conforms to the State Plan, which indicates the number of business days allowed for payments to occur. Since the State Plan amendment remains under review by CMS, a second notice of emergency and proposed rulemaking is required.

Pursuant to 1 DCMR § 311.4(e), emergency rulemakings are undertaken only for the immediate preservation of the public peace, health, safety, welfare, or morals. A second emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid beneficiaries who are in need of outpatient hospital services. By continuing to take emergency action, these proposed rules will ensure appropriate and needed payments to District hospitals and allow Medicaid beneficiaries access to needed outpatient medical services.

The second emergency and proposed rulemaking was adopted on October 31, 2013 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until February 28, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final

rulemaking action to adopt these rules not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 903 (Outpatient and Emergency Room Services) of Title 29 (Public Welfare) of the DCMR is amended by adding the following new subsection:

903.6 Each eligible hospital shall receive a supplemental hospital access payment calculated as set forth below:

(a) Except as provided in Subsection (c) and (e), for visits and services beginning May 1, 2013 and ending on September 30, 2014, additional quarterly access payments shall be made to each eligible hospital in an amount equal to each hospital's FY 2011 outpatient Medicaid payments divided by the total applicable hospital FY 2011 outpatient Medicaid payments multiplied by one quarter of the total outpatient private hospital access payment pool of $41,025,417 minus $250,000. The private hospital access payment pool shall be equal to the available spending room under the private hospital upper payment limit;

(b) Applicable hospital FY 2011 outpatient Medicaid payments shall include all outpatient Medicaid payments to Medicaid participating hospitals located within the District of Columbia except for the United Medical Center;

(c) In addition to the payment established in Subsection (a), all private children's hospitals with less than 150 beds located in the District of Columbia that participate in the Medicaid program shall receive an additional annual amount of $250,000 as an adjustment to the quarterly access payments;

(d) In no instance shall a Disproportionate Share Hospital (DSH) hospital receive more in quarterly access payments than the hospital-specific DSH limit, as adjusted by the District in accordance with the District's State Plan for Medical Assistance (State Plan). Any private hospital quarterly access payments that would otherwise exceed the adjusted hospital-specific DSH limit shall be distributed to other qualifying private hospitals based on each hospital's FY 2011 outpatient Medicaid payments relative to the total qualifying private hospital FY 2011 outpatient Medicaid payments;

(e) For visits and services beginning May 1, 2013, quarterly access payments shall be made to the United Medical Center. Each payment shall be equal to one quarter of the public hospital access payment pool amount of $1,259,557. The public hospital access payment pool shall be equal to the lesser of the available spending room under the public hospital upper

payment limit and the hospital-specific DSH limit as adjusted by the District in accordance with the State Plan; and

(f) Payments shall be made 15 business days after the end of the quarter for the Medicaid visits and services rendered during that quarter.

903.99 Definitions

For purposes of this section, the following terms shall have the meanings ascribed.

Available spending room - The remaining room for outpatient hospital reimbursement that when combined with all other outpatient payments made under the District's Medicaid State plan shall not exceed the allowable federal outpatient hospital upper payment limit specified in 42 C.F.R. § 447.321.

Upper payment limit – The federal requirement limiting outpatient hospital Medicaid reimbursement to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles consistent with 42 C.F.R. § 447.321.

Disproportionate Share Hospital – A hospital located in the District of Columbia that meets the qualifications established pursuant to Section 1923(b) of the Social Security Act (42 U.S.C. § 1396r–4).

Hospital-specific DSH limit - The federal requirement limiting hospital disproportionate share hospital (DSH) payments to the uncompensated care of providing inpatient and outpatient hospital services to Medicaid and uninsured individuals, consistent with Section 8 of Attachment 4.19-A of the District's federally approved Medicaid State plan.

Eligible Hospital – A hospital located in the District of Columbia that participates in the District of Columbia Medicaid program.

Comments on these rules should be submitted in writing to Linda Elam, Ph.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 899 North Capitol Street, NE, 6th Floor, Washington DC 20002; via telephone at (202) 442-9115; via email at DHCFPubliccomments@dc.gov; or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.