

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 (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, on an emergency basis, of a new Section 909, entitled "Screening, Diagnostic and Preventive Services," of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rulemakings reflect DHCF's Preventive Services State Plan Amendment (SPA) to the District of Columbia State Plan for Medical Assistance, which proposes to change the definition of "other diagnostic, screening, and preventive services", in accordance with the definition enacted through Section 4106 (Improving Access to Preventive Services for Eligible Adults in Medicaid) of the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148; 124 Stat. 119). The revised definition includes clinical services assigned a grade of A or B by the United States Preventive Services Task Force and all approved vaccines recommended by the Advisory Committee on Immunization Practice. Consistent with guidance set forth in the *Federal Register* (78 Fed. Reg. 39,870), the definition also incorporates preventive care and screening of infants, children, and adults, as recommended by the Health Resources and Services Administration's Bright Futures program, as well as additional preventive services for women recommended by the Institute of Medicine.

The corresponding SPA requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The SPA was approved by the Council in the Medical Assistance Program Emergency Amendment Act of 2013, effective July 30, 2013 (D.C. Act 20-130; 60 DCR 11384) and is currently pending approval by CMS.

Emergency action is necessary to ensure that District of Columbia residents who are eligible for Medicaid may secure access to the full complement of screening, diagnostic, and preventive services necessary to maximize health and preserve wellness. Access to screening, diagnostic, and preventive services is critical to mitigating the severity of chronic health conditions and moderating the severity of disease progression. Emergency action will support the continued delivery of prophylactic health services to the most financially and physically vulnerable residents, thereby improving the quality of the District's public health insurance system. The projected fiscal impact of the Preventive Services SPA is \$195,000 for FY 2014 and \$260,000 for FY 2015.

The emergency rulemaking was adopted on December 5, 2013 and shall become effective for services rendered on or after December 31, 2013, if the corresponding SPA has been approved

by CMS with an effective date of December 31, 2013, or on the effective date established by CMS in the approval of the corresponding SPA, whichever is later. If approved, DHCF will publish a notice which sets forth the effective date.

The emergency rules will remain in effect for one hundred and twenty (120) days or until April 3, 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 proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new Section 909 (Diagnostic, Screening and Preventive Services) is added to Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR to read as follows:

909 SCREENING, DIAGNOSTIC, AND PREVENTIVE SERVICES

909.1 In accordance with section 1905(a)(13) of the Social Security Act (“the Act”) (42 U.S.C. § 1396d(a)(13)), each beneficiary may be eligible to receive the following screening, diagnostic, and preventive services subject to the requirements set forth in these rules:

- (a) Services assigned a grade of A or B (*i.e.*, indicated as strongly recommended or recommended) by the United States Preventive Services Task Force;
- (b) Indicated vaccines recommended by the Advisory Committee on Immunization Practices and approved for use by the United States Food and Drug Administration;
- (c) Preventive care and screening of infants, children and adults as recommended by the Bright Futures Program of the Health Resources and Services Administration; and
- (d) Age appropriate services for women, as recommended by the Institute of Medicine.

909.1 Services described in § 909.1 shall in no way diminish access to the Early and Periodic Screening, Diagnostic, and Treatment services authorized by Section 1905(r) of the Act (42 U.S.C. § 1396d(r)) for beneficiaries ages zero (0) through twenty-one (21).

909.2 All services authorized under this section shall be recommended by a physician or other licensed practitioner of the healing arts acting within the authorized scope of practice under the Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*), and implementing rules, or comparable law in the state where the provider is licensed.

909.99 For purposes of this section, the following terms shall have the meaning ascribed:

Beneficiary – An individual enrolled in a medical assistance program, authorized under Titles XIX or XXI of the Social Security Act.

Indicated vaccines – Recommended age groups and medical indications for which administration of currently licensed vaccines is commonly recommended.

Comments on the proposed rule shall be submitted in writing to Linda Elam, Ph.D., M.P.H., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, One Judiciary Square, 441 4th Street, NW, Suite 900-S, Washington, DC 20001, via email at DHCFPubliccomments@dc.gov, online at www.dcregs.dc.gov, or by telephone at (202) 442-9115, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed rules may be obtained from the above address.