

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 (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 a new Chapter 89, of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Medicaid Electronic Health Record Incentive Payment Program."

This rule sets forth the conditions of provider participation, reimbursement, and administrative appeal procedures for the Medicaid Electronic Health Record Incentive Payment Program (MEIP). MEIP is established pursuant to the Health Information Technology and Clinical Health Act (HITECH) of 2009, enacted under Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L. 111-5) (codified as amended in Title 42 of the Code of Federal Regulations, Part 495) and the corresponding State Medicaid Health Information Technology Plan (SMHP) approved by the U.S. Department of Health and Human Services (HHS) on April 23, 2012. MEIP may grant incentive payments to eligible hospitals and eligible professionals, who adopt, implement, upgrade, and demonstrate the meaningful use of certified Electronic Health Records (EHR) technology.

A Notice of Emergency and Proposed Rulemaking was published on August 9, 2013 (60 DCR 011687). No comments were received. No substantive changes have been made. The Director adopted these rules as final on December 20, 2013 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 29 (Public Welfare) of the DCMR is amended as follows:

Add a new Chapter 89, MEDICAID ELECTRONIC HEALTH RECORD INCENTIVE PAYMENT PROGRAM to read as follows:

89 MEDICAID ELECTRONIC HEALTH RECORD INCENTIVE PAYMENT PROGRAM (MEIP)

8900 Provider Eligibility

8900.1 The Department of Health Care Finance (DHCF) shall administer the Medicaid Electronic Health Record Incentive Payment Program (MEIP), which provides incentive payments to certain eligible providers participating in the District of Columbia Medicaid program as they adopt, implement, upgrade, or demonstrate meaningful use of certified Electronic Health Record (EHR) technology.

8900.2 The following providers shall be eligible for participation in MEIP:

- (a) Eligible professionals as identified in Subsection 8900.3; and
- (b) Eligible hospitals as identified in Subsection 8900.5.

8900.3 An eligible professional shall be one (1) of the following:

- (a) A physician licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
- (b) A dentist licensed to engage in the practice of dentistry as defined by § 102(5) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
- (c) A certified nurse midwife licensed as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)), and certified by the American Midwifery Certification Board (AMCB);
- (d) A nurse practitioner licensed as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)); or
- (e) A physician's assistant, licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)), who practices in a Federally Qualified Health Center (FQHC).

8900.4 Consistent with the requirements of Subsection 8900.3, an eligible professional shall not be hospital-based, unless the professional's eligibility for incentive payments is based on practice at a FQHC.

8900.5 An eligible hospital shall be one (1) of the following:

- (a) An acute care hospital located in the District of Columbia; or
- (b) A children's hospital located in the District of Columbia.

8900.6 For each year of MEIP participation, an eligible provider shall meet all of the following requirements:

- (a) Have no current or pending sanction identified by the United States Department of Health and Human Services, Office of Inspector General or the District of Columbia list of excluded providers;
- (b) Declare the intent to participate by electronically registering with the CMS using the Medicare and Medicaid electronic health record incentive program registration and attestation website;
- (c) Use the District of Columbia State Level Registry to attest to the provider's qualifications to receive the incentive payment; and submit an electronic copy of a signed attestation form at <http://dc.ara incentive.com>;
- (d) Meet Medicaid patient volume requirements consistent with the requirements of Section 8901, "Methodology for Volume Requirements", and the District of Columbia State Medicaid Health Information Technology Plan (SMHP);
- (e) Submit a Certified Health IT Product List (CHPL) Product Number; and
- (f) Declare, if applicable, the intent to reassign incentive payments to a third party subject to the requirements of 42 C.F.R. § 495.10(f).

8900.7 For the first year of MEIP participation, an eligible provider shall meet the requirements of Subsection 8900.6 and meet one (1) of the following conditions:

- (a) Demonstrate and attest to adopting, implementing or upgrading EHR technology as defined in 42 C.F.R. § 495.302 that has been certified by the Office of the National Coordinator for Health Information Technology; or
- (b) Demonstrate that it is a meaningful EHR user as defined in 42 C.F.R. § 495.4.

8900.8 An eligible provider that demonstrates and attests to adopting, implementing or upgrading EHR technology in accordance with Subsection 8900.7 shall report which certified EHR technology they have adopted, implemented or upgraded to and provide supporting documentation (e.g., purchase receipts or other proof of good faith payment between purchaser and seller, or proof of binding contract) in a manner specified by DHCF.

8900.9 In the second, third, fourth, fifth, and sixth year of MEIP participation, an eligible provider shall satisfy all of the following criteria:

- (a) Meet the requirements of Subsection 8900.6;

- (b) Demonstrate that it is a meaningful EHR user as defined in 42 C.F.R. § 495.4; and
- (c) Use certified EHR technology interoperable with the system designated by the District to report clinical quality measures.

8901 Methodology for Volume Requirements

8901.1 An eligible professional shall establish and demonstrate, based on individual and group practice methodology, compliance with the following volume requirements:

- (a) An eligible professional shall have at least thirty percent (30%) of the professional's patient volume covered by Medicaid, except that:
 - (1) A board-certified pediatrician who does not practice at a FQHC shall have a minimum of twenty percent (20%) of patient encounters; and
 - (2) Any eligible professional predominately practicing at a FQHC shall have at least thirty percent (30%) of patient volume attributable to needy individuals.
- (b) An eligible professional shall calculate individual Medicaid patient volume by dividing the total Medicaid patient encounters (in and out of the District) in any continuous ninety (90) day period in the calendar year (CY) preceding the eligible professional's payment year, or in the twelve (12) months before the eligible professional's attestation; by the total patient encounters in the same ninety (90) day period;
- (c) Subject to 42 C.F.R. § 495.306(h), an eligible professional shall calculate group Medicaid patient volume by dividing the total Medicaid patient encounters (in and out of the District across the entire group or clinic) in any continuous ninety (90) day period in the CY preceding the eligible professional's payment year, or in the twelve (12) months before the eligible professional's attestation; by the total patient encounters (in and out of the District across the entire group or clinic); and
- (d) An eligible professional practicing in a FQHC shall calculate needy individual patient volume by dividing the total needy individual patient encounters in any continuous ninety day period in the CY preceding the eligible professional's attestation; by the total patient encounters in the same ninety (90) day period.

8901.2 An eligible acute care hospital shall have at least ten percent (10%) Medicaid patient volume based on individual methodology as calculated below:

- (a) An eligible hospital shall divide the total Medicaid patient encounters (in and out of the District) in any continuous ninety (90) day period in the preceding fiscal year (FY), or in the twelve (12) months before the eligible hospital's attestation; by
- (b) The total patient encounters in the same ninety (90) day period to calculate individual Medicaid patient volume.

8901.3 An eligible children's hospital shall be exempt from volume requirements of Subsections 8901.1 through 8901.2.

8902 Provider Incentive Payments

8902.1 For all payment years, MEIP incentive payments for each eligible provider shall be subject to all of the following conditions:

- (a) Incentive payments shall be calculated pursuant to 42 C.F.R. § 495.310;
- (b) An eligible provider may receive a MEIP incentive payment so long as the eligible provider meets all MEIP requirements as set forth in this chapter; and
- (c) No eligible provider shall receive an incentive payment after payment year 2021.

8902.2 In the first payment year, to receive an incentive payment, an eligible professional shall meet all eligibility and volume requirements in accordance with Sections 8900, "Provider Eligibility" and 8901, "Methodology for Volume Requirements;" and satisfy one (1) of the following conditions:

- (a) Demonstrate and attest to adopting, implementing or upgrading EHR technology as defined in 42 C.F.R. § 495.302 that has been certified by the Office of the National Coordinator for Health Information Technology; or
- (b) Demonstrate that it is a meaningful EHR user as defined in 42 C.F.R. § 495.4.

8902.3 Incentive payments to an eligible professional in the first payment year shall meet the following requirements:

- (a) An initial incentive payment shall not be dispersed after CY 2016;
- (b) An incentive payment shall not exceed twenty-one thousand two hundred fifty dollars (\$21,250);

- (c) Incentive payments cannot be received from more than one State or Medicaid incentive payment program in a payment year;
- (d) Incentive payments to pediatricians shall be subject to the limitations of 42 C.F.R. § 495.310(a)(4); and
- (e) Incentive payments to professionals that are Medicaid and Medicare eligible shall be subject to the limitations set forth in 42 C.F.R. § 495.10(e).

8902.4 In the second, third, fourth, fifth, and sixth payment year, to receive an incentive payment, an eligible professional shall meet all eligibility requirements in accordance with Sections 8900, "Provider Eligibility" and 8901, "Methodology for Volume Requirements;" and demonstrate that it is a meaningful EHR user as defined in 42 C.F.R. § 495.4.

8902.5 Incentive payments to an eligible professional in subsequent payment years shall meet the following requirements:

- (a) Incentive payments shall be disbursed consistent with the CY on a non-consecutive, annual basis, following verification of eligibility for the payment year;
- (b) A single incentive payment may not exceed eight thousand five hundred dollars (\$8,500);
- (c) An eligible professional shall not participate in MEIP for more than a total of six (6) years. Incentive payments shall not exceed sixty-three thousand seven hundred and fifty dollars (\$63,750) over a six (6) year period;
- (d) Incentive payments to pediatricians shall be subject to the limitations of 42 C.F.R § 495.310(a)(4); and
- (e) Incentive payments to professionals that are Medicaid and Medicare eligible shall be subject to the limitations set forth in 42 C.F.R. § 495.10(e).

8902.6 In the first payment year, to receive an incentive payment, an eligible hospital shall meet all eligibility requirements in accordance with Sections 8900, "Provider Eligibility" and 8901, "Methodology for Volume Requirements;" and satisfy one (1) of the following conditions: