

## 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. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2014 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 45 (Medicaid Reimbursement for Federally Qualified Health Centers) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish the standards for interim rates for Federally Qualified Health Centers (FQHCs).

FQHCs operating as D.C. Medicaid providers currently receive payment rates that are based on policies developed in 1999 and 2000. Since that time, the number of FQHCs operating in the District has grown as has the variation in the services offered and patients served. In order to ensure adequate rates reflective of FQHCs' reported costs, DHCF has developed interim rates for each FQHC. This rulemaking memorializes the standards used to develop interim rates and the subsequent cost settlement process – based on the current State Plan for Medical Assistance's reliance on audited cost reports and reasonable, allowable costs – that will occur once DHCF receives federal approval of a new prospective payment system for FQHCs.

Each Medicaid-enrolled FQHC submitted a cost report for its fiscal year (FY) 2013. For any FQHC that had a full year of operation prior to the District's FY 2013, the interim rate was developed based on provider-submitted cost reports for FY 2013 and adjusted for inflation. For any FQHC with its first full year of operation in or after FY 2013, DHCF identified a comparable FQHC with which to align that facility's rates. This comparison was based on a number of factors including patient demographics, services, and primary medical conditions treated. Upon approval of the new prospective payment system, all interim rates authorized under this rule will be reconciled following submission of Medicaid cost reports.

This emergency action is necessary in order to ensure that the District's FQHCs maintain adequate resources to continue their role as safety-net providers within the public health care delivery system. As a provider category, FQHCs deliver primary, dental, and behavioral health care services to some of the District's most physically and economically vulnerable residents. In order to minimize additional threats to the health, safety, and welfare of the residents served by FQHC's, DHCF is taking this emergency action to authorize interim payments.

The emergency rulemaking was adopted on December 18, 2014 and will become effective on January 1, 2015. The emergency rules shall remain in effect for one hundred twenty (120) days from the adoption date, until April 15, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 45, MEDICAID REIMBURSEMENT FOR FEDERALLY QUALIFIED HEALTH CENTERS, of Title 29, PUBLIC WELFARE, is deleted in its entirety and replaced with a new Chapter 45 to read as follows:**

**4500 GENERAL PROVISIONS**

- 4500.1 Medicaid reimbursement for services furnished on January 1, 2001 through December 31, 2014, by a Federally Qualified Health Center (FQHC) shall be based on a prospective payment system consistent with the requirements set forth in Section 1902(aa) of the Social Security Act (42 U.S.C. § 1396(aa)).
- 4500.2 Each FQHC in existence during Fiscal Years (FYs) 1999 and 2000 shall be paid a prospective rate for each visit or encounter with a Medicaid recipient when a medical service or services are furnished.
- 4500.3 The prospective rate for services rendered beginning on or after January 1, 2001 through and including September 30, 2001, shall be calculated as follows:
- (a) The sum of the FQHC's audited allowable costs for the FYs 1999 and 2000 shall be divided by the total number of patient visits in FYs 1999 and 2000; and
  - (b) The amount established in paragraph (a) shall be adjusted to take into account any increase or decrease in the scope of such services furnished by the FQHC during FY 2001. Each FQHC shall report to the Department of Health Care Finance (DHCF) any increase or decrease in the scope of services, including the starting date of the change. The amount of the adjustment shall be negotiated between the parties. The adjustment shall be implemented not later than ninety (90) days after establishment of the negotiated rate.
- 4500.4 Allowable costs shall include reasonable costs that are incurred by a FQHC in furnishing Medicaid coverable services to Medicaid eligible patients, as determined by Medicare Reasonable Cost Principles set forth in 42 C.F.R. § 413.
- 4500.5 For services furnished beginning FY 2002 through December 31, 2014, a FQHC shall be reimbursed at a rate that is equal to the rate in effect for the previous fiscal year, increased by the percentage increase in the Medicare Economic Index (MEI), as defined in Section 1842(i)(3) of the Social Security Act (42 U.S.C. § 1395u(i)(3)) for primary care services, and adjusted to take into account any

increase or decrease in the scope of services furnished by the FQHC during the fiscal year.

- 4500.6 Each FQHC shall report to the Department of Health Care Finance (DHCF) any increase or decrease in the scope of services, including the starting date of the change. The amount of the adjustment for an increase or decrease in services shall be negotiated between the parties. The adjustment shall be implemented not later than ninety (90) days after establishment of the negotiated rate.
- 4500.7 Except as otherwise specified in Subsection 4500.6, for services furnished beginning January 1, 2015 through September 30, 2015, a FQHC shall be paid an interim rate for each visit with a Medicaid recipient. Interim rates paid under this subsection and Subsection 4500.8 shall be subject to audit, including post-audit reconciliation of any under- or over-payments.
- 4500.8 The interim rate referenced in Subsection 4500.7 shall be determined for each FQHC as follows:
- (a) Each FQHC shall report actual costs for the FQHC FY 2013 to DHCF using the designated cost report template; and
  - (b) DHCF shall establish an interim rate for each FQHC based on the provider's reported FQHC FY 2013 costs which shall be inflated by the MEI to FY 2015.
- 4500.9 In any case in which an entity first qualifies as a FQHC and is in operation for a full year after FY 2000 but before the beginning of FY 2013, the prospective rate for services furnished in the first year shall be equal to the average of the prospective rates paid to other FQHC's located in the same area with a similar caseload. For each fiscal year following the first year in which the entity first qualified as a FQHC, the prospective payment rate shall be computed in accordance with Subsections 4500.3-4500.4.
- 4500.10 If an entity first qualifies as a FQHC and is in operation for a full year during or after FY 2013, the interim rate for services furnished on January 1, 2015 through September 30, 2015 shall not be greater than the average of the interim rates paid to other FQHC's located in the same area with a similar caseload. DHCF shall identify a similar FQHC by comparing the new facility's services, patient demographics, and most treated medical conditions with those of existing FQHCs.
- 4500.11 Each FQHC that furnishes services to Medicaid recipients pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act (42 U.S.C. § 1396u-2(a)(1)(B)), shall receive a wrap-around payment if the FQHC's total reimbursement for services received from all managed care entities is less than the amount the FQHC would be entitled to receive pursuant to Subsections 4500.2 - 4500.8 of these rules. The amount of the

wrap-around payment shall equal the difference between the amount the FQHC is entitled to receive pursuant to Subsections 4500.2 - 4500.8 and the total amount received from all managed care entities for treating Medicaid managed care enrollees. The wrap-around payment shall be paid quarterly.

4500.12 Each FQHC shall submit to DHCF on a quarterly basis, information regarding the amount of payments received from any managed care entity for treating Medicaid managed care enrollees.

#### **4501 INTERIM PAYMENTS**

4501.1 Each FQHC paid in accordance with Subsection 4500.4 shall submit a Medicaid cost report to DHCF no later than ninety (90) days after the end of the FQHC FY 2015.

4501.2 DHCF, or its designee, shall audit cost reports submitted in accordance with Subsection 4501.1 to determine allowable costs and calculate final rates for the period beginning January 1, 2015. Allowable costs shall include reasonable costs that are incurred by a FQHC in furnishing Medicaid coverable services to Medicaid eligible patients, as determined by Medicare Reasonable Cost Principles set forth in 42 C.F.R. § 413.

4501.3 All claims paid using interim rates for services delivered on and after January 1, 2015 shall be reprocessed by the Medicaid Management Information System using the final rate calculated in accordance with § 4501.2. Where necessary, DHCF shall also reconcile quarterly wrap-around payments pursuant to Subsections 4500.11-4500.12 and 4501.2.

4501.4 Reprocessing of payments pursuant to Subsection 4501.3 may result in the identification and remittance of an additional payment owed to the FQHC or identification and recoument of any overpayment due to DHCF.

#### **4502 APPEALS**

4502.1 After completion of any audit of an FQHC's reported costs (*i.e.*, cost report), DHCF shall provide each FQHC with a written notice of its determination of any adjustment to the payment rate. The notice shall include the following:

- (a) A description of the rate adjustment;
- (b) The amount of money due to or from DHCF attributable to the change in the payment rate;
- (c) A summary of all audit adjustments made to the FQHC's reported costs, including an explanation, by appropriate reference to the law, rules, or program manual, of the reason in support of the adjustment; and

- (d) A statement informing the FQHC of the right to request an administrative review within thirty (30) days of the date of the determination.

4502.2 Each FQHC shall have thirty (30) days from the date of the determination issued pursuant to Subsection 4502.1 to submit a written request for administrative review if it disagrees with any audit adjustment or payment rate calculation.

4502.3 Administrative review shall occur as follows:

- (a) The request for administrative review shall be submitted to: Reimbursement Analyst, Managed Care and FQHCs, Office of Rates, Reimbursement and Financial Analysis, Office of the Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900 South, Washington, DC 20001 or via email at [ORRFA-AdminReview@dc.gov](mailto:ORRFA-AdminReview@dc.gov);
- (b) The written request for administrative review shall include a specific description of the audit adjustment or payment rate calculation to be reviewed, the reason for the review, the relief requested, and any other documentation in support of the relief requested; and
- (c) DHCF shall mail a written determination relative to the administrative review no later than sixty (60) days from the date of the written request for administrative review under Subsection 4502.2.

4502.5 Within thirty (30) days of receipt of DHCF's written determination relative to the administrative review, a FQHC may appeal the written determination by filing a written request for appeal with the District of Columbia Office of Administrative Hearings.

4502.6 Filing an appeal shall not stay any action to recover any overpayment.

## 4599 DEFINITIONS

4599.1 For purposes of this chapter, the following terms shall have the meanings ascribed:

**Federally Qualified Health Center (FQHC)** - An entity that meets the definition set forth in Section 1905(1)(2)(B) of the Social Security Act (42 U.S.C. § 1396d(1)(2)(B)).

**Fiscal Year (FY)** - The District's fiscal year.

**FQHC FY** - A FQHC's fiscal year.

**Increase or decrease in scope of services** - A change in the category, type, intensity, duration, and/or amount of services. A change in the cost of a service, in and of itself, is not considered a change in the scope of services.

**Interim rate** - A rate, subject to audit and post-audit reconciliation, that is based on unaudited provider-reported costs reflecting costs and payments for services delivered on and after January 1, 2015.

**Primary care services** - Those services defined in Section 1842(i)(4) of the Social Security Act (42 U.S.C. § 1395u(i)(4)).

**Prospective rate** - The rate paid for services furnished in a particular fiscal year that is independent of actual cost experience during the same year in which the rate is in effect.

**Visit** - The aggregate of one or more medical, dental, and/or behavioral health care services delivered by an FQHC to a Medicaid beneficiary on the same day.

Comments on the emergency and proposed rule shall be submitted in writing to Claudia Schlosberg, J.D., Acting Senior Deputy Director/Interim 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](mailto:DHCFPubliccomments@dc.gov), online at [www.dcregs.dc.gov](http://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.