DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, 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 (2014 Repl.)), 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 an amendment to Section 903 (Outpatient Hospital Services Reimbursement Methodology) under Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rule amends the payment system by the District of Columbia Medicaid program for reimbursement of outpatient hospital services.

Effective Fiscal Year (FY) 2015, beginning October 1, 2014, all hospitals that deliver outpatient services and are enrolled as providers under the District Medicaid program will be reimbursed for outpatient services by a prospective payment system (PPS) under the Enhanced Ambulatory Patient Grouping (EAPG) classification system. The EAPG based reimbursement methodology will reimburse providers of outpatient hospital services based on the patient's severity of illness and risk of mortality as well as the hospital's resource needs. The emergency and proposed rulemaking will also identify which providers are subject to the revised reimbursement system; delineate coverage and payment for specific services; and establish exceptions to service reimbursement under the payment system.

This emergency rulemaking is necessitated by the immediate need to ensure that District residents have continued access to quality outpatient hospital care services. Emergency action is necessary for the immediate preservation of the health, safety and welfare of persons receiving these services.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance (State Plan) was approved by the Council of the District of Columbia (Council) through the Medicaid Assistance Program Emergency Amendment Act of 2014, enacted July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014)). The amendment must also be approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

A Notice of Emergency and Proposed Rulemaking was published in *D.C. Register* on December 26, 2014 (61 DCR 013196). Since the first notice of emergency and proposed rules expired before the end of the comment period, DHCF is publishing this Notice of Second Emergency and Proposed Rulemaking to allow the general public to submit comments. This second emergency rulemaking was adopted on January 16, 2015 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until May 15, 2015, 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 this emergency and proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Section 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, of Chapter 9, MEDICAID PROGRAM, Title 29 DCMR, PUBLIC WELFARE, is amended to read as follows:

903 GENERAL PROVISIONS

903.1 The purpose of this section is to set forth the requirements governing Medicaid reimbursement of outpatient hospital services.

903.2 All hospitals that deliver outpatient hospital services to Medicaid-eligible individuals and are enrolled as providers under the Department of Health Care Finance's (DHCF) Medicaid program shall be reimbursed under a prospective payment system (PPS) under the Enhanced Ambulatory Patient Grouping (EAPG) classification system.

903.3 The EAPG payment system shall be applicable to the following hospitals enrolled as Medicaid providers:

(a) In-District General Hospitals;

(b) Specialty Hospitals; and

(c) Out-of-District Hospitals with the exception of Maryland hospitals.

903.4 The EAPG is a visit-based classification system that uses a grouping algorithm for outpatient services to characterize the amount and type of resources used during a hospital outpatient visit for patients with similar clinical characteristics.

903.5 Except as provided in Subsection 903.7, DHCF shall update the EAPG grouper/pricer software version every two (2) years, or more often when necessary. These updates shall be effective on October 1st of the applicable year. The first update shall be implemented in FY 2017, beginning on October 1, 2016.

903.6 DHCF shall use the national relative weights of the EAPG grouper/pricer software and update the EAPG relative weights at a minimum of every two (2) years to coincide with the grouper version upgrades, or more frequently as needed.

903.7 DHCF shall update the EAPG grouper/pricer software on a quarterly basis to accommodate changes in the national Current Procedural Terminology (CPT)/HealthCare Common Procedure Coding System (HCPCS) code sets.

903.8 The EAPG payment system shall apply to all hospital claims for dates of service on or after October 1, 2014.

903.9 Payment for an outpatient hospital claim under the EAPG payment system shall be based on the following formula:

Adjusted EAPG relative weight x policy adjustor (if applicable)
x
Conversion factor

903.10 Each EAPG shall be assigned a national relative weight, which shall be adjusted by the applicable payment mechanisms including discounting, packaging, and/or consolidation.

903.11 DHCF may also use policy adjustors, as appropriate, to ensure that Medicaid beneficiaries maintain access to certain services and adequate provider networks based on review and analysis.

903.12 Effective October 1, 2014, a pediatric policy adjustor in the amount of 1.25 shall be applied to the national weight for all outpatient visits for children under the age of twenty-one (21). Thereafter, the policy adjustor rate shall be evaluated during the annual rate review.

903.13 The EAPG payment system shall utilize one of the following conversion factors:

(a) An In-District rehabilitation hospital factor;

(b) A District-wide conversion factor for other in-District and out-of-District hospitals (except Maryland hospitals); or

(c) A District-wide conversion factor increased by two percent (2%) for outpatient services provided by hospitals located in an Economic Development Zone (EDZ).

903.14 A factor that is two percent (2%) higher than the District-wide conversion factor shall be applicable to hospitals whose primary location is in an area identified as an Economic Development Zone and certified by the District Department of Small and Local Business Development as a Developmental Zone Enterprise (DZE) pursuant to D.C. Official Code § 2-218.37.

903.15 The conversion factors shall be dependent upon DHCF's budget target, and shall be calculated using outpatient hospital paid claims data from DHCF's most recent and available fiscal year.

903.16 The base year data for the conversion factors effective Fiscal Year 2015, beginning on October 1, 2014, shall be historical claims data for outpatient hospital services from the DHCF Fiscal Year 2013, for dates of service beginning on October 1, 2012 through September 30, 2013.

903.17 The base year shall change when the EAPG payment system is rebased and recalibrated with a grouper version and EAPG relative weights update every other year.

903.18 DHCF shall utilize a budget target for Fiscal Year 2015 which will be based on seventy-seven percent (77%) of Fiscal Year 2013 costs that will be inflated to Fiscal Year 2015 using the CMS Inpatient Prospective Payment System (IPPS) Hospital Market Basket Rate.

903.19 DHCF shall reduce the budget target for Fiscal Year 2015 by five percent (5%) in anticipation of more complete and accurate coding by hospitals upon implementation of the EAPG payment system.

903.20 The budget target shall be subject to change each year. Initially, DHCF shall monitor claim payments at least biannually during DHCF Fiscal Years 2015 and 2016 to ensure that expenditures do not significantly exceed or fall below the budget target and shall make adjustments to the conversion factors as necessary. DHCF shall provide written notification to the hospitals of the initial conversion factors and any future adjustments to the conversion factors.

903.21 DHCF shall analyze claims data annually to determine the need for an update of the conversion factors. The conversion factors in subsequent years shall be based on budget implications or other factors deemed necessary by DHCF.

903.22 New hospitals shall receive the District-wide conversion factor on an interim basis until the conversion factor annual review during which conversion factors for all hospitals shall be analyzed and subject to adjustment. Any changes in rates shall be effective on October 1 of each year.

903.23 Each CPT/HCPCS procedure code on a claim line shall be assigned to the appropriate EAPG at the claim line level. The total reimbursement amount shall be the sum of all claim lines.

903.24 Prospective payments using the EAPG classification system shall be considered final and there shall be no retrospective cost settlements.

903.25 Coverage and payment for specific services shall be made as follows:

(a) Payment of laboratory and radiology shall be processed and paid by EAPG, subject to consolidation, packaging, or discounting;

(b) Physical therapy, occupational therapy, speech therapy, and hospital dental services shall be processed and paid by EAPGs, subject to consolidation, discounting, and packaging; and

(c) Observation services shall be processed and paid by EAPG. In order to receive reimbursement for services with an observation status, claims shall include at least eight (8) consecutive hours (billed as units of service). Any hours in excess of forty-eight (48) shall not be covered.

903.26 All DHCF policies for outpatient hospital services requiring prior authorization shall be applicable under the EAPG payment system.

903.27 Exceptions to reimbursement under the EAPG payment system shall include the following:

(a) Vaccines for children that are currently paid under the federal government's Vaccine for Children (VFC) program;

(b) Professional services provided by physicians; and

(c) Claims originating from Maryland hospitals, St. Elizabeths Hospital, and managed care organizations.

903.28 With the exception of Specialty hospitals and Maryland hospitals, outpatient diagnostic services provided by a hospital one (1) to three (3) days prior to an inpatient admission at the same hospital shall not be covered under the EAPG payment system and shall be considered as part of the inpatient stay.

903.29 With the exception of Specialty hospitals and Maryland hospitals, outpatient diagnostic services that occur on the same day as an inpatient admission at the same hospital shall be considered part of the inpatient stay.

903.30 The EAPG payment system shall be utilized for any Medicaid payment adjustments for Provider Preventable Conditions as set forth in Chapter 92 of Title 29 of the District of Columbia Municipal Regulations.

9299 DEFINITIONS

9299.1 For purposes of this section, the following terms shall have the meanings ascribed:

Base year – The standardized year on which rates for all hospitals for outpatient hospital services are calculated to derive a prospective payment system.

Budget target - The total amount that DHCF anticipates spending on all hospital outpatient claims during a fiscal year.

Conversion Factor – The dollar value based on DHCF's budget target, multiplied by the final EAPG weight for each EAPG on a claim to determine the total allowable payment for a visit.

Consolidation – Collapsing multiple significant procedures into one EAPG during the same visit which used to determine payment under the EAPG classification system reimbursement methodology.

Discounting - The reduction in payment for an EAPG when significant procedures or ancillary services are repeated during the same visit or in the presence of certain CPT/HCPCS modifiers.

Department of Health Care Finance – The single state agency responsible for the administration of the District of Columbia's Medicaid program.

DHCF Fiscal year – The period between October 1st and September 30th; used to calculate the District's annual budget.

Enhanced Ambulatory Patient Grouping (EAPG) – A group of outpatient procedures, encounters, or ancillary services reflecting similar patient characteristics and resource use; incorporates the use of diagnosis codes Current Procedural Terminology (CPT)/Healthcare Common Procedure Coding System (HCPCS) procedure codes, and other outpatient data submitted on the claim.

EAPG Grouper/Pricer Software – A system designed by 3M Health Information Systems to process HCPCS/CPT and diagnosis code information in order to assign patient visits at the procedure code level to the appropriate EAPG and apply appropriate bundling, packaging, and discounting logic to calculate payments for outpatient visits.

EAPG Relative Weight - The national relative weights calculated by 3M Health Information Systems.

EAPG Adjusted Relative Weight – The weight assigned to the patient grouping after discounting, packaging, or consolidation.

General Hospital - A hospital that has the facilities and provides the services that are necessary for the general medical and surgical care of patients, including the provision of emergency care by an emergency department in accordance with 22-B DCMR§ 2099 .

Grouper Version - Numeric identifier used by 3M Health Information Systems to distinguish any updates made to the software.

In-District Hospital - Any hospital defined in accordance with 22-B DCMR § 2099 that is located within the District of Columbia.

New Hospital - A hospital without an existing Medicaid provider agreement that is enrolled to provide Medicaid services after September 30, 2014.

Observation Status – Services rendered after a physician writes an order to evaluate the patient for services and before an order for inpatient admission is prescribed.

Outpatient Hospital Services – Preventative, diagnostic, therapeutic, rehabilitative, or palliative services rendered in accordance with 42 C.F.R. § 440.20(a).

Out-of-District Hospital - Any hospital that is not located within the District of Columbia. The term does not include hospitals located in the State of Maryland and specialty hospitals identified under 22-B DCMR § 2099.

Packaging – Including payment for certain services in the EAPG payment, along with services that are ancillary to a significant procedure or medical visit.

Specialty Hospital - A hospital that meets the definition of "special hospital" as set forth in 22-B DCMR § 2099 as follows: (a) defines a program of specialized services, such as obstetrics, mental health, orthopedics, long term acute care, rehabilitative services or pediatric services; (b) admits only patients with medical or surgical needs within the defined program; and (c) has the facilities for and provides those specialized services.

Visit – A basic unit of payment for an outpatient prospective payment system.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D, Senior Director/Interim Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, 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.