

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 (District) 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. & 2015 Supp.)) and 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 938 (Increased Reimbursement for Eligible Primary Care Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rule will grant permanent authority to continue enhanced Medicaid reimbursement rates for specific primary care services, such as evaluation and management (E&M) services and immunization administration, provided by primary care services providers enrolled in the fee-for-service (FFS) program who meet specific eligibility requirements. Additionally, this rule will extend these enhanced rates when the same services are provided by Psychiatrists, Obstetricians and Gynecologists (OB\GYNS), and Advanced Practice Registered Nurses (APRNs) who meet the program's eligibility requirements.

The Health Care and Education Reconciliation Act of 2010, approved January 5, 2010 (Pub.L. 111-152, 124 Stat. 1029), required the Medicaid program to increase reimbursement for specific primary care services furnished by certain primary care physicians to one hundred percent (100%) of the Medicare fee schedule in calendar years 2013 and 2014. DHCF, through the approval of a subsequent State Plan Amendment, extended the enhanced payment rates through the end of FY 2015. However, neither the ACA, nor the subsequent extension by the District, authorized enhanced payment rates to other types of physicians and providers who deliver these same primary care services, such as psychiatrists, OB/GYNS and APRNs, practicing under their own license.

In the interest of promoting access to primary care services across the District of Columbia, these rules authorize a permanent extension for increased Medicaid reimbursement for specific primary care services furnished by certain primary care physicians that include OB/GYNs and psychiatrists, as well as APRNs as eligible providers. These rules are subject to approval of the corresponding State Plan Amendment by the Council of the District of Columbia (Council) and the federal Centers for Medicare and Medicaid Services (CMS). For FY 2016, the estimated cost of extending the increased rates for these services is approximately \$1,200,000.

Emergency action is necessary for the immediate preservation of the health, safety and welfare of persons receiving primary care services. This emergency and proposed rulemaking will ensure permanent access to specific primary care services for District residents receiving evaluation and management (E&M) services, furnished by certain qualified primary care providers.

The Notice of Emergency and Proposed Rulemaking was adopted on December 31, 2015, and will become effective on January 1, 2016 if the corresponding State Plan amendment has been approved by CMS with an effective date of January 1, 2016 or the effective date established by CMS, whichever is later. The emergency rules shall remain in effect for one hundred and twenty (120) days, until April 29, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to adopt this proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 938, INCREASED REIMBURSEMENT FOR ELIGIBLE PRIMARY CARE SERVICES, is amended to read as follows:

938 INCREASED REIMBURSEMENT FOR ELIGIBLE PRIMARY CARE SERVICES

938.1 Except as provided in Subsection 938.2, primary care services eligible for enhanced reimbursement under the Healthcare Common Procedure Coding System (HCPCS) shall include evaluation and management (E&M) services billed under thirty-eight (38) select codes and Current Procedural Terminology (CPT) vaccine administration codes 90460, 90471, 90472, 90473, and 90474, or their successor codes. DHCF shall publish a list of all eligible codes on its provider website at www.dc-medicaid.com.

938.2 Primary care service providers shall include qualified Primary Care Physicians, Psychiatrists, Obstetricians/Gynecologists (OB\GYNs) and Advanced Practice Registered Nurses (APRNs).

938.3 A primary care physician, OB/GYN or Psychiatrist shall be considered a qualified primary care physician eligible to receive increased reimbursement for certain primary care services, provided the following requirements are met:

(a) The physician has provided DHCF with a written self-attestation on a form prescribed by DHCF that he or she has a specialty designation of family medicine, general internal medicine, pediatric medicine, obstetrics/gynecology or psychiatry which states:

(1) That he or she has Board-certification in family medicine, general internal medicine, pediatric medicine, obstetrics and gynecology or psychiatry; or

(2) He or she has provided E&M and vaccine administration services under the codes described in Subsection 938.1 that equal at least sixty percent (60%) of all the Medicaid services that the physician

bills during either of the following:

- (i) The most recently completed calendar year; or
- (ii) The month prior to the month that DHCF receives the self-attestation form referenced in this Subsection for a primary care services provider enrolled in Medicaid for less than a full calendar year.

938.4 An Advanced Practice Registered Nurse (APRN) delivering services within his or her scope of practice, shall receive increased reimbursement for eligible primary care services, provided the APRN has provided DHCF with a written self-attestation on a form prescribed by DHCF that states that he or she has provided E&M and vaccine administration services under the codes described in Subsection 938.1 that equal at least sixty percent (60%) of all the Medicaid services billed by the APRN during either of the following:

- (a) The most recently completed calendar year; or
- (b) The month prior to the month that DHCF receives the self-attestation form referenced in this subsection, for a primary care services provider enrolled in Medicaid for less than a full calendar year.

938.5 A primary care services provider who previously submitted a self-attestation form to DHCF and was eligible to receive the enhance primary care rates in FY 15 need not submit a new form.

938.6 Except as provided in Subsection 938.7, reimbursement under this rule shall commence from the date that DHCF receives the self-attestation form from an eligible provider, as described in Subsections 938.3 through 938.5.

938.7 Reimbursement for eligible services provided on or after January 1, 2016, shall be made in accordance with the corresponding State Plan Amendment as approved by the Centers for Medicare and Medicaid Services (CMS), provided an eligible primary care services provider who is participating in Medicaid on the effective date of these rules has submitted the self-attestation form, as described in Subsections 938.3 through 938.6.

938.8 An eligible primary care services provider, who has submitted a self-attestation form as required in Subsections 938.3 through 983.5, shall be obligated to inform DHCF in writing of any changes that alter the provider's eligibility for reimbursement under this rule.

938.9 For eligible primary care services rendered by a primary care services provider, as described in this rulemaking, FFS Medicaid reimbursement shall be made at the lower of the providers' billed charges or the applicable reimbursement rate,

as defined in Subsections 938.10 and 938.11.

- 938.10 The applicable rate for primary care services furnished for the period beginning with the effective date of the corresponding State Plan Amendment as approved by the CMS through the last date of the calendar years shall be the Medicare Part B schedule rate that is applicable to a non-facility site of service in effect on the first day of the same calendar year.
- 938.11 The applicable rate for eligible vaccine administration services shall be the Regional Maximum Administration Fee in effect for the calendar year in which the services were furnished.
- 938.12 For eligible primary care E&M services, the applicable rates for services furnished on or after January 1, 2016 shall be identified on the DHCF provider website at www.dc-medicaid.com.
- 938.13 For eligible vaccine administration services, the applicable rates for services furnished on or after January 1, 2016 shall be identified on the DHCF provider website at www.dc-medicaid.com.
- 938.14 DHCF shall publish the applicable rates for eligible primary care and vaccine administration services each calendar year on its provider website at www.dc-medicaid.com.
- 938.15 The eligibility of each primary care services provider shall be subject to verification that the provider has complied with the requirements set forth in this rule.
- 938.16 An eligible primary care services provider, who is found in violation of this rule, shall be subject to the requirements set forth in Chapter 13 of Title 29 DCMR, entitled Medicaid Program: Administrative Procedures.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.