DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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 (2014 Repl.)), and 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 entitled "Outpatient and Emergency Room Services" of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The effect of these rules is to provide supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program for outpatient hospital services.

Continued emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid beneficiaries who are in need of outpatient hospital services. By taking emergency action, this proposed rule will ensure appropriate and needed payments to District hospitals and allow Medicaid beneficiaries access to needed outpatient medical services.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance ("State Plan") 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 Council has approved the State Plan through the Fiscal Year 2016 Budget Support Act of 2015, signed August 11, 2015 (D.C. Act 21-148; 62 DCR 10905 (August 14, 2015)). DHCF is awaiting approval from CMS.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 13, 2015 at 62 DCR 14908. No comments were received and no substantive changes were made to this second emergency and proposed rulemaking.

The emergency rulemaking was adopted on February 11, 2016, and shall become effective on that date subject to approval by CMS of the corresponding State Plan amendment. The emergency rules will remain in effect for one hundred and twenty days (120) after adoption, or until June 10, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.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 take final rulemaking action to adopt these rules not less than thirty (30) days after 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 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, is amended by adding the following new Subsection 903.31:

903.31 Beginning FY 2016, each eligible hospital shall receive a supplemental hospital access payment calculated as set forth below:

(a) Except as provided in Subsection (c) and (d), for visits and services beginning October 1, 2015, and ending on September 30, 2016, quarterly access payments shall be made to each eligible private hospital. Each payment shall be an amount equal to each hospital's Fiscal Year (FY) 2013 outpatient Medicaid payments divided by the total in District private hospital FY 2013 hospital outpatient Medicaid payments, and multiplied by one quarter (1/4) of the total outpatient private hospital access payment pool. The total outpatient private hospital access payment pool shall be equal to the total available spending room under the private hospital outpatient Medicaid upper payment limit for FY 2016 as determined by the State Medicaid agency;

(b) Applicable private hospital FY 2013 outpatient Medicaid payments shall include all outpatient Medicaid payments to Medicaid participating hospitals located within the District of Columbia except for the United Medical Center;

(c) In no instance shall a Disproportionate Share Hospital (DSH) hospital receive more in quarterly access payments than the hospital-specific DSH limit, as adjusted by the District in accordance with the District's State Plan for Medical Assistance (State Plan). Any private hospital quarterly access payments that would otherwise exceed the adjusted hospital-specific DSH limit, shall be distributed to the remaining qualifying private hospitals based on each hospital's FY 2013 outpatient Medicaid payments relative to the total qualifying private hospital FY 2013 outpatient Medicaid payments;

(d) For visits and services beginning October 1, 2015, quarterly access payments shall be made to the United Medical Center. Each payment shall be equal to one quarter (1/4) of the public hospital access payment pool. The total public hospital access payment pool shall be equal to the lessor of the available spending room under the District-operated hospital outpatient Medicaid upper payment limit for FY 2016, and the United Medical Center DSH limit as adjusted by the District in accordance with the State Plan;

(e) Payments shall be made fifteen (15) business days after the end of the quarter for the Medicaid visits and services rendered during that quarter; and

(f) For purposes of this section, the term Fiscal Year shall mean dates beginning on October 1st and ending on September 30th.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy/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.