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.774; D.C. Official Code §1-307.02 (2012 Repl. & 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) (2013 Repl.)), hereby gives notice of the adoption of a new 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 rule authorizes increased Medicaid reimbursement rates for specific primary care services, such as evaluation and management (E&M) services and the administration of immunizations by Medicaid providers enrolled in the fee-for-service (FFS) program. These rules also establish the reimbursement rates, the types of providers and services that are eligible for the increased reimbursement, and the application process for the FFS program. The Health Care and Education Reconciliation Act of 2010, approved January 5, 2010 (Pub.L. 111-152; 124 Stat. 1029)(codified as amended in scattered sections of 42 U.S.C.), requires the Medicaid program to increase Medicaid payments for specific primary care services furnished by certain physicians in calendar years 2013 and 2014. E&M services and immunization administration services are considered to be a core part of a state's Medicaid benefit package. These services consist of visits and consultations furnished by physicians and other qualified non-physician providers. E&M services play an important role in the coordination of care of patients with chronic disease by establishing a regular source of care or "medical home." Immunization administration services include the administration of vaccines and toxoids. The administration of vaccines and toxoids serves to reduce and eliminate the incidence of vaccine-preventable diseases affecting District residents. Pursuant to the Fiscal Impact Statement, approved by the Office of the Chief Financial Officer on February 22, 2013, the total computed cost of increased reimbursement for specific primary care services is estimated at $27,667,118 for calendar years 2013 and 2014.

The corresponding State Plan Amendment (SPA) to the District of Columbia State Plan for Medical Assistance was approved by the Council of the District of Columbia (See PR 20-122). On June 4, 2013, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services approved the corresponding SPA with an effective date of January 1, 2013.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 19, 2013 (60 DCR 005874). No comments were received and no substantive changes have been made. The Director adopted these rules as final on December 23, 2013 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

A new Section 938 of Chapter 9 of Title 29 DCMR is added 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 increased reimbursement under the Healthcare Common Procedure Coding System (HCPCS) shall include evaluation and management (E&M) services billed under codes 99201 through 99499; and Current Procedural Terminology (CPT) vaccine administration codes 90460, 90461, 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 Services billed under codes that were not reimbursable under the DHCF fee schedule as of January 1, 2013 shall be ineligible for reimbursement. DHCF shall publish a list of ineligible codes on its provider website at www.dc-medicaid.com.

938.3 An eligible primary care physician shall receive increased reimbursement for eligible primary care services, provided the following requirements are met:

(a) A physician provides a written self-attestation that the physician has a specialty designation of family medicine, general internal medicine, or pediatric medicine; and

(b) A primary care physician provides a written self-attestation of the following:

(1) That he or she has Board-certification in family medicine, general internal medicine, pediatric medicine, or in a subspecialty of family medicine; general internal medicine or pediatric medicine as designated by the American Board of Medical Specialties (ABMS); the American Board of Physician Specialties (ABPS); or the American Osteopathic Association (AOA); 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 Subsections 938.4 through 938.9, for a physician enrolled in Medicaid for less than a full calendar year.

938.4 An Advanced Practice Registered Nurse (APRN) shall receive increased reimbursement for eligible primary care services billed pursuant to the FPS fee

schedule, provided the APRN provides eligible primary care services under the direct supervision of a physician who:

(a) Meets the eligibility requirements of Subsection 938.3;

(b) Assumes professional responsibility for the services provided by the APRN; and

(c) Has submitted a self-attestation form, as described in Subsections 938.3 through 938.9, which identifies the APRN as a practitioner under the physician's direct supervision.

938.5 To receive reimbursement under this rule for calendar year (CY) 2013 and CY 2014, an eligible physician shall provide the DHCF with a self-attestation that the physician meets the requirements of Subsection 938.3 using a form prescribed by DHCF.

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 938.9.

938.7 Reimbursement 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 physician who is participating in Medicaid on the effective date of these rules shall submit the self-attestation form, as described by Subsections 938.3 through 938.6, to DHCF no later than July 1, 2013.

938.8 An eligible physician, who has submitted a self-attestation form as required by Subsection 938.3, is obligated to inform DHCF in writing of any changes that alter the physician's eligibility for reimbursement under this rule.

938.9 An APRN who provides eligible primary care services under the direct supervision of an eligible physician shall be exempt from the self-attestation form requirement.

938.10 For eligible primary care services rendered by an eligible physician, FPS Medicaid reimbursement shall be made at the lower of the physician's billed charges or the applicable reimbursement rate, as defined in Subsection 938.13.

938.11 For eligible primary care services rendered by an APRN, FFS Medicaid reimbursement shall be made in accordance with the approved State Plan using the applicable rate, as defined in Subsection 938.13.

938.12 Reimbursement rates established pursuant to this section apply to eligible primary care services billed as fee-for-service that are furnished on and after the effective date of the corresponding State Plan Amendment as approved by CMS and ending on December 31, 2014.

938.13 The applicable rates for eligible primary care services shall be as follows:

(a) For eligible E&M services:

(1) The applicable rate for services furnished for the period beginning with the effective date of the corresponding State Plan Amendment as approved by the Centers for Medicare and Medicaid Services (CMS) through December 31, 2013 shall be the higher of the Medicare Part B fee schedule rate that is applicable to the non-- facility site of service in effect on January 1, 2013 or the rate that would be derived using the CY 2009 conversion factor and the CY 2013 Medicare relative value units (RVUs); and

(2) The applicable rate for services furnished for the period beginning January 1, 2014 through December 31, 2014 shall be the higher of the Medicare Part B fee schedule rate that is applicable to the Medicare Part B fee schedule rate that is applicable to the non-facility site of service in effect on January 1, 2014 or the rate that would be derived using the CY 2009 conversion factor and the CY 2014 Medicare relative value units (RVUs).

(b) For eligible vaccine administration services:

(1) The applicable rate for services furnished for the period beginning with the effective date of the corresponding State Plan Amendment as approved by the Centers for Medicare and Medicaid Services (CMS) through December 31, 2013 shall be the Regional Maximum Administration Fee in effect in CY 2013; and

(2) The applicable rate for services furnished for the period beginning January 1, 2014 through December 31, 2014 shall be the Regional Maximum Administration Fee in effect in CY 2014.

(c) DHCF shall publish the applicable rates for eligible primary care services each calendar year on its provider website at www.dc-medicaid.com/.

938.14 The eligibility of each physician or APRN shall be subject to verification that the physician or APRN has complied with the requirements set forth in this rule.

938.15 Any administrative action with respect to an eligible physician or APRN found in violation of the rule, shall comply with the requirements set forth in Chapter 13 of Title 29 DCMR.

938.99 **DEFINITIONS**

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

Advanced Practice Registered Nurse (APRN): A licensed registered nurse with advanced education, knowledge, skills, and scope of practice who has been certified to perform advanced- level nursing actions by a national certifying body acceptable to the Board of Nursing; and pursuant to District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2011 Supp.)). Advanced practice registered nursing shall include the categories of nurse midwife and nurse- practitioner. (D.C. Official Code§ 3-1202.04 (2007 Repl. & 2011 Supp.)).