

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

FINAL

ORDER

Medicaid Recovery Audit Contractor's (RAC) Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Recovery Audit Contractor's (RAC) Program, specifically, to request an extension of the exception from participation in the RAC Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the November 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 2, 2024, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding RAC Program.

Background

Under Section 1902(a)(42)(B)(i) of the Act, states and territories are required to establish programs to contract with one or more Medicaid Recovery Audit Contractors (RACs) to identify underpayments and overpayments, as well as recouping overpayments, under the Medicaid State Plan and any Medicaid State Plan Waivers. This applies to all services for which payment is made to any entity under such plan or waiver. States must establish these programs in a manner consistent with State law and generally in the same way as the Secretary contracts with contingency fee contractors for the Medicare RAC program.

Section 1902(a)(42)(B)(i) of the Act specifies that States shall establish programs under which they contract with Medicaid RACs subject to such exceptions or requirements as the Secretary may require for purposes of a particular State. This provision enables the Centers for Medicare and Medicaid Services (CMS) to vary the Medicaid RAC program requirements. For example, CMS may exempt a State from the requirement to pay Medicaid RACs on a contingent basis for collecting overpayments when State law expressly prohibits contingency fee contracting. However, another fee structure could be required under any such exception (e.g., a flat fee arrangement).

Statutory Authority

- §1902(a)(42)(b) of the Social Security Act
- The Patient Protection and Affordable Care Act, Public Law 111-148, Section 6411, Expansion of the RAC Program
- 42 CFR §455 Subpart A
- 42 CFR §455 Subpart F

Purpose

The purpose of this regulation to amend the RAC requirements.

Summary of Proposed Changes

Effective October 1, 2024, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to request an extension of the exception from participation in the RAC program.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 2, 2024.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

There were no public comments received.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DMMA Division Director has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2024 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding RAC Program, specifically, to request an extension of the exception from participation in the RAC program and shall be final effective January 11, 2025.

12/12/2024 | 2:27 PM EST

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

Medicaid Recovery Audit Contractor's (RAC) Program

***Please Note: Due to formatting of certain amendments to the regulation, they are not being published here. Copies of the document is available at:**

[https://regulations.delaware.gov/register/january2025/final/36a page Amended.pdf](https://regulations.delaware.gov/register/january2025/final/36a%20page%20Amended.pdf)

28 DE Reg. 547 (01/01/25) (Final)