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State Name: Delaware

State Plan Amendment (SPA) #18-004

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS-179
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
801 N Market Street, Suite 9400
Philadelphia, Pennsylvania 19107-3134



Region III/Division of Medicaid and Children's Health Operations

SWIFT #100120184019

December 26, 2018

Mr. Stephen M. Groff, Director
Division of Medicaid and Medical Assistance
P.O. Box 906
New Castle, DE 19720-0906

Dear Mr. Groff:

We are pleased to inform you of the approval of Delaware State Plan Amendment (SPA) 18-004. This amendment modifies the State Plan to grant Delaware an exception to the Recovery Audit Contracting (RAC) requirements for a 2-year period ending June 30, 2020. If Delaware decides to request an extension beyond this 2-year approval period, a SPA will need to be submitted at that time that demonstrates the RAC requirements continue to be impractical and not cost effective. Enclosed is a copy of the approved SPA pages and the signed CMS-179 form. The effective date of this amendment is July 1, 2018.

If you have any questions, you may contact Michael Cleary at (215) 861-4282.

Sincerely,

A solid black rectangular box used to redact the signature of Francis McCullough.

Francis McCullough
Associate Regional Administrator

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL
NUMBER:
SPA #18-004

2. STATE
DELAWARE

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: **TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)**

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 1, 2018

5. TYPE OF PLAN MATERIAL (*Check One*):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN **AMENDMENT**

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate Transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION:

- **The Patient Protection and Affordable Care Act, Public Law 111-148, Section 6411, Expansion of the Recovery Audit Contractor (RAC) program**
- **Section 1902(a)(42)(b) of the Social Security Act, requires States to establish programs to contract with RACs to audit payments to Medicaid providers by December 31, 2010**
- **42 CFR 455 Subpart A, Medicaid Agency Fraud Detection and Investigation Program**
- **42 CFR 455 Subpart F, Medicaid Recovery Audit Contractors Program**

7. FEDERAL BUDGET IMPACT:

a. FFY 2018 \$ 0
b. FFY 2019 \$ 0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Section 4.5 General Program Administration Pages 36, 36a, and 36b

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (*If Applicable*):

Section 4.5 General Program Administration Pages 36, 36a, and 36b

10. SUBJECT OF AMENDMENT:

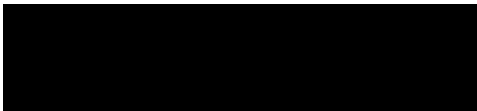
Medicaid Recovery Audit Contractors Program

11. GOVERNOR'S REVIEW (*Check One*):

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

**OTHER, AS SPECIFIED:
Governor's comments under separate
correspondence**

12. SIGNATURE OF STATE AGENCY OFFICIAL:



16. RETURN TO:

**Stephen M. Groff
Director
Division of Medicaid and Medical Assistance
P.O. Box 906
New Castle, Delaware 19720-0906**

13. TYPED NAME:

Stephen M. Groff, Director, Division of Medicaid and Medical Assistance

14. TITLE: **Designee for Kara Odom Walker, MD, MPH, MSHS, Secretary,
Delaware Health and Social Services**

15. DATE SUBMITTED:

9/28/18

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED

September 28, 2018

18. DATE APPROVED:

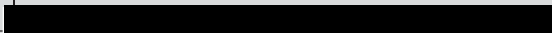
December 26, 2018

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

July 1, 2018

20. SIGNATURE OF REGIONAL OFFICIAL:



21. TYPED NAME:

Fran McCullough

22. TITLE:

Associate Regional Administrator

23. REMARKS:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: DELAWARE

Citation

§1902(a)(42)(B)
P.L. 111-148
§42 CFR 455 Subpart A
§42 CFR 455 Subpart F

4.5 Medicaid Agency Fraud Detection and Investigation Program

The Medicaid agency has established and will maintain methods, criteria, and procedures for prevention and control of program fraud and abuse, including methods for identification, investigation, and referral of suspected fraud cases.

TN No. SPA# 18-004

Supersedes

TN No. SP# 268

HCFA ID: 1010P/0012P

Approval Date December 26, 2018

Effective Date July 1, 2018

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: DELAWARE

4.5 Medicaid Recovery Audit Contractor Program

Citation

Section 1902(a)(42)(B)(i)
of the Social Security Act

- The State has established a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State plan and under any waiver of the State plan.

Section 1902(a)(42)(B)(ii)(I)
of the Act

- The State is seeking an exception to establishing such program for the following reasons:

Although the Delaware Division of Medicaid and Medical Assistance (DMMA) previously had a Recovery Audit Contract (RAC) vendor, that contract is no longer in place. DMMA posted a Request for Proposals (RFPs) in an attempt to attract a new RAC vendor, but received no bids. The majority of Delaware's Medicaid population is enrolled in managed care and the providers treating them are not subject to audit recovery contracting. There is not sufficient revenue generation to fund an adequate contingency fee

- The State/Medicaid agency has contracts of the type(s) listed in section 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute. Delaware RFP for RACs is completed.

Place a check mark to provide assurance of the following:

- The State will make payments to the RAC(s) only from amounts recovered.
- The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.

Section 1902
(a)(42)(B)(ii)(II)(aa) of the Act

The following payment methodology shall be used to determine State payments to Medicaid RACs for identification and recovery of overpayments (e.g., the percentage of the contingency fee):

- The State attests that the contingency fee rate paid to the Medicaid RAC will not exceed the highest rate paid to Medicare RACs, as published in the Federal Register

TN No. SPA# 18-004

Approval Date December 26, 2018

Supersedes

TN No. 10-005

Effective Date July 1, 2018

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: DELAWARE

4.5 Medicaid Recovery Audit Contractor Program

- Citation The State attests that the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will only submit for FFP up to the amount equivalent to that published rate.
- The contingency fee rate paid to the Medicaid RAC that will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will submit a justification for that rate and will submit for FFP for the full amount of the contingency fee.
- Section 1902 (a)(42)(B)(ii)(II)(bb) of the Act The following payment methodology shall be used to determine State payments to Medicaid RACs for the identification of underpayments (e.g., amount of flat fee, the percentage of the contingency fee):
- Section 1902 (a)(42)(B)(ii)(III) of the Act The State has adequate appeal process in place for entitles to appeal any adverse determination made by Medicaid RAC(s).
- Section 1902(a)(42)(B)(ii)(IV)(aa) of the Act The State assures that the amounts expended by the State to carry out the program will be amounts expended as necessary for the proper and efficient administration of the State plan or waiver of the plan.
- Section 1902(a)(42)(B)(ii)(IV)(bb) of the Act The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.
- Section 1902 (a)(42)(B)(ii)(IV)(cc) of the Act Efforts of the Medicaid RAC(s) will be coordinated with other contactors or entitles performing audits of entitles receiving payments under the State plan or waiver in the State, and/or State and Federal law enforcement entitles and the CMS Medicaid Integrity Program.

TN No. SPA# 18-004

Supersedes

TN No. 10-005

Approval Date December 26, 2018

Effective Date July 1, 2018