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**State/Territory Name:** **Delaware**

**State Plan Amendment (SPA) #:** **22-0015**

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

Centers for Medicare & Medicaid Services  
601 E. 12th St., Room 355  
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

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March 17, 2023

Mr. Theodore G. Mermigos, Jr.  
Acting Division Director  
Division of Medicaid Medical Assistance  
P.O. Box 906  
New Castle, DE, 19720

Re: Delaware (DE) State Plan Amendment (SPA) 22-0015

Dear Mr. Mermigos:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 22-0015. This amendment requests for an exception from the Medicaid Recovery Audit Contractor (RAC) requirements.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations. Section 1902(a)(42)(B) of the Social Security Act requires the Division of Medicaid Medical Assistance (DMMA) to have a RAC program, and 42 CFR 455.516 allows DMMA to be excepted from the RAC requirements by submitting to CMS a written justification for CMS to review and approve through the State Plan Amendment process. This letter is to inform you that the Delaware's Medicaid SPA Transmittal Number 22-0015 was approved on March 13, 2023, with an effective date of October 1, 2022 for a two-year period that expires on September 30, 2024.

If you have any questions, please contact Talbatha Myatt at 215-861-4259 or via email at [Talbatha.Myatt@cms.hhs.gov](mailto:Talbatha.Myatt@cms.hhs.gov).

Sincerely,



Ruth A. Hughes, Acting Director  
Division of Program Operations

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL  
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 2 — 0 0 1 5

2. STATE

DE

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT



XIX



XXI

TO: CENTER DIRECTOR  
CENTERS FOR MEDICAID & CHIP SERVICES  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

10/1/22

5. FEDERAL STATUTE/REGULATION CITATION

1902 (a)(42)(b) of the SSA; 42 C.F.R. § 455 Subpart A/F

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY 2023 \$ 0  
b. FFY 2024 \$ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Section 4.5 Page 36a

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

Section 4.5 Page 36a

9. SUBJECT OF AMENDMENT

Medicaid Recovery Audit Contractors Program

10. 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:

11. SIGNATURE OF STATE AGENCY OFFICIAL

*DocuSigned by*  
[Redacted Signature]

15. RETURN TO

12. TYPED NAME  
Stephen M. Groff

Stephen M. Groff, Director, DMMA, P.O. Box 906 New Castle, DE19720

13. TITLE  
Director

14. DATE SUBMITTED  
12/16/2022 10:35 AM EST

**FOR CMS USE ONLY**

16. DATE RECEIVED 12/22/2022

17. DATE APPROVED 03/13/2023

**PLAN APPROVED - ONE COPY ATTACHED**

18. EFFECTIVE DATE OF APPROVED MATERIAL  
10/01/2022

19. SIGNATURE OF APPROVING OFFICIAL  
[Redacted Signature]

20. TYPED NAME OF APPROVING OFFICIAL  
Ruth A. Hughes

21. TITLE OF APPROVING OFFICIAL  
Acting Director, Division of Program Operations

22. REMARKS

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. Program review and assessment indicate RAC requirements as impractical and not cost-effective for Delaware's Medicaid program.

- 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# 22-0010

Approval Date 03/13/2023

Supersedes

TN No. 18-004

Effective Date October 1, 2022