

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance, 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. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 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) (2018 Repl.)), hereby gives notice of the adoption of an amendment to Chapter 93 (Medicaid Recovery Audit Contractor Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

State Medicaid programs are required, under § 6411 of the Patient Protection and Affordable Care Act of 2011, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119), to establish a Recovery Audit Contractor (RAC) program. Through these programs, states can coordinate with contractors or other entities that perform Medicaid claim audits to better identify and reconcile Medicaid provider overpayments and underpayments. Timely identification of Medicaid provider overpayments and underpayments is an important safeguard against future improper Medicaid payments.

The final rulemaking makes changes to align the District's payments with federal requirements set forth at 42 CFR § 455.510 and to update the District's payment methodology for entities under contract with the District under the RAC Program. This change will allow the District's Medicaid program to increase the contingency fee rate paid to RAC entities up to the maximum percentage allowable under federal law. There is no associated fiscal impact.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on December 13, 2019, at 66 DCR 016244. No comments were received and no changes were made. The Director adopted these rules as final on March 24, 2020 and they shall become effective on the date of publication of this rulemaking in the *D.C. Register*.

Subsections 9300.4 through 9300.7 of Section 9300, GENERAL PROVISIONS, of Chapter 93, MEDICAID RECOVERY AUDIT CONTRACTOR PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, are amended to read as follows:

- 9300.4 The contracted entity identified in § 9300.3 shall be paid a contingency fee in accordance with the requirements set forth in Section 4, Attachment 4.5 of the District of Columbia Medicaid State Plan and federal requirements set forth at 42 CFR § 455.510.
- 9300.5 All audits performed by the Medicaid Recovery Audit Contractor (RAC) shall be subject to the billing standards of the District of Columbia (District) Medicaid program.

9300.6 The following claims and payments may be excluded from review and audit under the Medicaid RAC Program:

- (a) Claims associated with managed care, waiver, and demonstration programs;
- (b) Payments made for Indirect Medical Education and Graduate Medical Education;
- (c) Claims reimbursed more than three (3) years prior to the date of the RAC review or audit;
- (d) Claims that require reconciliation due to beneficiary liability; and
- (e) Unpaid claims.

9300.7 In accordance with 42 CFR §§ 455.506(c) and 455.508(g), DHCF shall ensure that no claim audited under the Medicaid RAC Program has been or is currently being audited by another entity.

Subsection 9300.8 is added to read:

9300.8 DHCF shall reserve the right to limit the Medicaid RAC Program audit period by claim type, provider type, or for any other reason where DHCF believes it is in the best interest of the Medicaid program to limit claim review. Timely notice of this action shall be made to the Medicaid RAC in writing, by letter, or via email.

853 PUBLIC HEALTH EMERGENCY SMALL BUSINESS GRANT PROGRAM

853.1 The Deputy Mayor for Planning and Economic Development (“DMPED”) may modify or waive the conditions to making grants or subgrants under the Citywide Grants Manual and or the DMPED Grants Manual for the purpose of issuing grants pursuant to the Public Health Emergency Small Business Grant Program (“**Grant Program**”) established pursuant to Section 2316 of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective March 17, 2020 (D.C. Act 23-0247) and Mayor’s Order 2020-052, dated March 23, 2020.