

Presented and Approved: December 19, 2018

SUBJECT: Approval to Exercise Option Year Four (4) of Contract No. 14-PR-HCM-08, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.

**#18-82
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
D.C. WATER AND SEWER AUTHORITY**

The Board of Directors ("Board") of the District of Columbia Water and Sewer Authority ("the Authority") at its meeting on December 19, 2018 upon consideration of a joint use matter, decided by a vote of ten (10) in favor and zero (0) opposed to approve Option Year Four (4) of Contract No. 14-PR-HCM-8, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.

Be it resolved that:

The Board of Directors hereby authorizes the General Manager to execute Option Year Four (4) of Contract No. 14-PR-HCM-08, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. The purpose of the option is to continue providing HMO services for employees hired after October 1, 1987. The option amount is \$4,900,000.

This Resolution is effective immediately.


Secretary to the Board of Directors

Presented and Approved: December 19, 2018

SUBJECT: Approval to Execute a Contract Modification to Fund Services and Exercise Option Year Two (2) for Medical Insurance Plans for Contract No. 16-PR-HCM-26, Connecticut General Life Insurance

**#18-83
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
D.C. WATER AND SEWER AUTHORITY**

The Board of Directors ("Board") of the District of Columbia Water and Sewer Authority ("the Authority") at its meeting on December 19, 2018 upon consideration of a joint use matter, decided by a vote of ten (10) in favor and zero (0) opposed to approve a Contract Modification to Contract No. 16-PR-HCM-26, Connecticut General Life Insurance to Fund Services through the end of the calendar year and to exercise Option Year Two (2) for Medical Insurance.

Be it resolved that:

The Board of Directors hereby authorizes the General Manager to execute a contract modification to Contract No. 16-PR-HCM-26, Connecticut General Life Insurance to fund services through the end of the calendar year in the amount of \$996,289.65 and to exercise option year two for medical plans: Health Maintenance Organization and Preferred Provider Organization for employees hired after October 1, 1987 in the amount of \$13,350,000. The purpose of the option is to continue providing HMO services for employees hired after October 1, 1987. The total contract amount is \$14,346,289.65.

This Resolution is effective immediately.


Secretary to the Board of Directors

Presented and Adopted: December 19, 2018

SUBJECT: Approval to Publish Notice of Final Rulemaking to Include Rules Implementing the District's CRIAC Nonprofit Relief Program with the Rules Expanding the Customer Assistance Program (CAP) for DC Water's CAP2 Program and Rules for Implementing the District's CAP3 Program

**#18-84
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

The Board of Directors ("Board") of the District of Columbia Water and Sewer Authority, ("the Authority"), at the Board meeting held on December 19, 2018 upon consideration of a non-joint use matter decided by a vote of six (6) in favor and zero (0) opposed to Publish Notice of Final Rulemaking to Include Rules Implementing the District's CRIAC Nonprofit Relief Program with the Rules Expanding the Customer Assistance Program (CAP) for DC Water's CAP2 Program and Rules for Implementing the District's CAP3 Program.

WHEREAS, on October 19, 2018, DC Water published the Notice of Proposed Rulemaking (NOPR) in the D.C. Register at 65 DCR 11766, to receive comments on the proposed rulemaking to establish a new CAP2 Program and rules implementing the District funded CAP3 and CRIAC Nonprofit Relief Program; and

WHEREAS, the comments received raised concerns regarding: 1) proposed changes in criteria used to define low-income; 2) CAP3 implementation being dependent on benefits and eligibility criteria that DOEE have not yet published; 3) apprehension that the DOEE might propose a CRIAC Nonprofit Relief program that treats religious institutions more favorably than non-religious nonprofits institutions generally; and

WHEREAS, on November 29, 2018, the Washington Post published an article captioned, "In D.C., water fees tap into tension over race, gentrification and the First Amendment" that reported the District's proposal for the CRIAC Nonprofit Relief Program might violate the First Amendment Establishment Clause because cemetery and religious organizations would be eligible to receive benefits if their CRIAC charges were "0.75 percent of net revenue," whereas charitable nonprofit, but non-religious affiliated groups would be eligible to receive benefits only if their CRIAC charges were "5 percent of net revenue;" and

WHEREAS, on November 29, 2018, the DC Retail Water and Sewer Rates Committee met to consider the merits of the proposal to expand DC Water's Customer Assistance

Program (CAP), comments received during the public comment period, and issues raised regarding disparities among nonprofit eligibility criteria; and

WHEREAS, on November 29, 2018, after having evaluated the proposal to expand the DC Water CAP, rules proposed to manage the District's CAP3 and CRIAC Nonprofit Relief Programs, public comments, testimony, suggested eligibility criteria and the recommendation of the General Manager, the DC Retail Water and Sewer Rates Committee recommended that proposed regulations to expand the DC Water CAP to add CAP2 and implement the District CAP3 Program be adopted as modified herein; and

WHEREAS, on November 29, 2018, the DC Retail Water and Sewer Rates Committee considered the potential legal risks to DC Water if the Authority acted to implement the District's CRIAC Nonprofit Relief Program, and decided to recommend postponement (reservation) of final consideration of the CRIAC Nonprofit Relief Program until the District has promulgated regulations and until after such regulations have been evaluated to determine whether the eligibility criteria have been evaluated for conformance with applicable laws and regulations; and

WHEREAS, in Resolution 18-80, dated December 6, 2018, the Board directed the General Manager to publish the Notice of Final Rulemaking to expand the Customer Assistance Program (CAP) to establish rules for DC Water's CAP2 Program, and rules for implementing the District's CAP3 Program; and

WHEREAS, in Resolution 18-80, the Board did not take action on the rules for implementing the District's CRIAC Nonprofit Relief Program, but reserved action pending the District Department of Energy and Environment (DOEE) promulgation of regulations and the evaluation of those regulations for legal sufficiency and conformance with applicable laws and regulations; and

WHEREAS, on December 6, 2018, the District's Office of the Attorney General (OAG) issued its Legal Sufficiency Review for DOEE's revised draft Emergency and Proposed Rules, which establish the rules for determining financial eligibility for DC Water's CAP and CAP2 programs and financial and programmatic eligibility for DOEE's Impervious Surface Area Fee Relief Programs for CAP3 and CRIAC Nonprofit Relief; and

WHEREAS, the DOEE CRIAC Nonprofit Relief Program revised draft rules reviewed by OAG required all nonprofit organizations to document that their "CRIAC is at least 1% of their annual revenue less expenses;" and

WHEREAS, the OAG Legal Sufficiency Review also noted that the DOEE CRIAC Nonprofit Relief Program revised draft rules set different means for the nonprofit organizations to document that they meet the 1% requirement: requiring charitable organizations to submit an IRS Form 990, but requiring religious nonprofits and nonprofit cemeteries to self-certify; noting "that religious nonprofits and nonprofit cemeteries, unlike charitable organizations, are not required to file IRS Form 990 with the IRS;" and

WHEREAS, the OAG Legal Sufficiency Review concluded that the DOEE CRIAC Nonprofit Relief Program “revised draft rules, which reflect changes [OAG’s] recommended and [DOEE] approved, are legally sufficient;” and

WHEREAS, on December 6, 2018, OAG also issued the executed Rulemaking Transmittal Form for the Emergency and Proposed Rules as final; and

WHEREAS, on December 13, 2018, DOEE staff informed DC Water that they intend to publish the Emergency and Proposed Rules for publication in the District of Columbia not later than December 28, 2018; and

WHEREAS, on December 13, 2018, the Freedom From Religion Foundation (FFRF) sent a letter to the Board Chairman and Board members, questioning the lack of a “verification requirement for the religious groups” and suggesting that the “relief program should only be open to nonprofits that file financial information with the IRS.”; and

WHEREAS, on December 18, 2018, in response to concerns raised by FFRF and Board members, DOEE provided DC Water with additional revisions to the regulations for the CRIAC hardship criteria for cemeteries and religious institutions, changing it from the requirement to “submit a signed declaration...that self-certifies the organization’s annual CRIAC is at least one percent (1%) of the organization’s annual revenue less expenses” to the requirement to “submit a signed declaration and income statement, executed under penalty of perjury, prepared in accordance with standard accounting practices, documenting that the annual CRIAC is at least one percent (1%) of the organization’s annual revenue less expenses;” and

WHEREAS, on December 18, 2018, the DC Retail Water and Sewer Rates Committee met to consider the DOEE revised draft Emergency and Proposed Rules, OAG Legal Sufficiency Review, the additional revisions to the CRIAC hardship criteria, and the recommendations of the General Manager; and

WHEREAS, on December 18, 2018, DC Retail Water and Sewer Rates Committee determined that the revisions to the DOEE rules removed the disparate hardship eligibility criteria that raised potential legal risks to DC Water due to potential First Amendment Establishment Clause violations, and addressed concerns that the declaration submitted would be executed under penalty of perjury; and

WHEREAS, on December 18, 2018, DC Retail Water and Sewer Rates Committee received assurances from DOEE that the application for the CRAIC Nonprofit Relief program would include a requirement that it would be executed by the person of highest authority in the nonprofit’s organization; and

WHEREAS, on December 18, 2018, the DC Retail Water and Sewer Rates Committee, after having evaluated the DOEE Emergency and Proposed Rules for the CRIAC Nonprofit Relief Program, the OAG Legal Sufficiency Review, the additional revisions to the CRIAC hardship criteria, and the recommendation of the General Manager,

recommended the adoption of the proposed rules for DC Water's implementation of the CRIAC Nonprofits Relief Program with the rules approved by the Board for DC Water's CAP2 and the District's CAP3 program; and

WHEREAS, after consideration of the recommendation of the DC Retail Water and Sewer Rates Committee, the report of the General Manager, and the OAG Legal Sufficiency Review, the District Members of the Board, recommended the adoption of the proposed rules for DC Water's implementation of the CRIAC Nonprofits Relief Program with the rules for DC Water's CAP2 and the District's CAP3 program adopted by the Board in Resolution 18-80 as provided herein.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The District Members of the Board of Directors direct the General Manager to publish a Notice of Final Rulemaking as summarized below and as stated in Attachment A, which describe an expansion of CAP benefits to offer the credits identified as CAP2, and the rules to implement the District's CAP3 and CRIAC Nonprofit Relief Programs, effective January 1, 2019:

DOEE CRIAC Nonprofit Relief Program Summary

Adopt regulations as provided in Attachment A to implement the DOEE CRIAC Nonprofit Relief Program as summarized below with the rules adopted in Resolution 18-80 for DC Water's CAP2 program and DOEE's CAP3 program, effective January 1, 2019:

- a. Proposal to establish procedures to provide credits to certain nonprofit customers authorized by DOEE to receive the District's CRIAC Nonprofit Relief Program credits:

CRIAC Nonprofit Relief Program (Non-Residential Customers)

- Eligible non-residential customers shall receive CRIAC Nonprofit Relief Program benefits as defined by DOEE, subject to the availability of District funds.
- CRIAC Nonprofit Relief Program benefits will be applied to non-residential customers' accounts provided DOEE notifies DC Water of the customers' eligibility, and DC Water receives funds from DOEE to apply the credits.
- CRIAC Nonprofit Relief Program benefit period will be the entire Fiscal Year 2019, beginning October 1st and ending September 30th, subject to the availability of funds.

- CRIAC Nonprofit Relief Program customers are required to reapply for the benefits at least 30-days, and no more than 60-days before the end of the benefit period.
2. The General Manager is authorized to take all steps necessary in his judgment and as otherwise required, to publish the Notice of Final Rulemaking as provided in Attachment A in accordance with the District of Columbia's Administrative Procedure Act.

This Resolution is effective immediately.


Secretary to the Board of Directors

Attachment A

DC Water's CAP Expansion - Final Rulemaking Effective January 1, 2019

Chapter 41, RETAIL WATER AND SEWER RATES, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 4102, CUSTOMER ASSISTANCE PROGRAMS, is amended to read as follows:

4102 CUSTOMER ASSISTANCE PROGRAMS

4102.1 CUSTOMER ASSISTANCE PROGRAM (CAP)

- (a) Participation in the Customer Assistance Program (CAP) shall be limited to a single-family or individually-metered Residential Customer that meets the following eligibility requirements:
 - (1) The applicant is responsible for paying for water and sewer services and/or the Clean Rivers Impervious Surface Area Charge (CRIAC); and
 - (2) The Department of Energy & Environment (DOEE) has determined that the CAP applicant's annual household income meets the household income-eligibility requirements for the District's Low Income Home Energy Assistance Program (LIHEAP), below sixty percent (60%) of the State Median Income (SMI) for the District of Columbia.
- (b) An approved CAP customer shall receive the following benefits:
 - (1) Exemption from water service charges, sewer service charges, Payment-in-Lieu of Taxes (PILOT) fees and Right-of-Way (ROW) fees for the first Four Hundred Cubic Feet (4 Ccf) per month of water used. If the customer uses less than Four Hundred Cubic Feet (4 Ccf) of water in any month, the exemption will apply based on the amount of that month's billed water usage;
 - (2) Credit of one hundred percent (100%) off of the monthly billed Water System Replacement Fee; and
 - (3) Credit of fifty percent (50%) off of the monthly billed CRIAC.
- (c) Upon DC Water's receipt of notice from DOEE that the CAP applicant meets the financial eligibility requirements, DC Water shall provide the CAP discounts to the CAP customer's account from the date that DOEE accepts a completed CAP application to the end of the fiscal year in which the application was submitted.
- (d) To continue receiving CAP benefits without interruptions, the CAP customer must submit a renewal CAP application to DOEE in accordance with the Utility Discount Program renewal deadline. A CAP customer that

submits their renewal CAP application after this period, and is subsequently approved by DOEE, will receive CAP benefits as of the date of the application.

4102.2 CUSTOMER ASSISTANCE PROGRAM II (CAP2)

- (a) Participation in the CAP2 Program shall be limited to a single-family or individually-metered Residential Customer that meets the following eligibility requirements:
 - (1) The applicant maintains an active DC Water account and is responsible for paying for water and sewer services and/or the CRIAC; and
 - (2) DOEE has determined that the CAP2 applicant's annual household income is equal to or above the household income-eligibility limits for the District's LIHEAP, sixty percent (60%) of the SMI for the District of Columbia and below eighty percent (80%) of the Area Median Income (AMI) for the District of Columbia, not capped by the United States median low-income limit.
- (b) An approved CAP2 customer shall receive the following benefits, subject to the availability of funds:
 - (1) Exemption from water service charges and sewer service charges for the first three Hundred Cubic Feet (3 Ccf) per month of water used. If the customer uses less than three Hundred Cubic Feet (3 Ccf) of water in any month, the exemption will apply based on the amount of that month's billed water usage; and
 - (2) Credit of fifty percent (50%) off of the monthly billed CRIAC.
- (c) Upon DC Water's receipt of notice from DOEE that the CAP2 customer meets the financial eligibility requirements, DC Water shall provide the CAP2 benefits for not more than the entire Fiscal Year 2019, beginning October 1, 2018 and terminating on September 30, 2019, subject to the availability of budgeted funds.
 - (1) CAP2 customers that submit a complete application to DOEE before March 1, 2019, shall receive CAP2 benefits retroactive to October 1, 2018 and terminating on September 30, 2019.
 - (2) CAP2 customer that submit a complete application on or after March 1, 2019, shall receive CAP2 benefits as of the date of submittal and terminating on September 30, 2019.
- (d) If DC Water determines that the remaining budgeted funds are insufficient to provide CAP2 benefits, DC Water may:
 - (1) Suspend the process for accepting CAP2 applicants; or
 - (2) Suspend or adjust providing CAP2 benefits to CAP2 recipients.

(e) The CAP2 Program shall terminate on September 30, 2019.

4102.3 Eligibility for the CAP and CAP2 Programs shall be determined by DOEE based on the income eligibility criteria provided in § 4102.1(a)(2) and § 4102.2(a)(2).

4102.4 DOEE CUSTOMER ASSISTANCE PROGRAM III FOR SINGLE-FAMILY AND INDIVIDUALLY METERED HOUSEHOLDS

(a) DC Water shall apply DOEE Customer Assistance Program III (CAP3) benefits to an eligible single-family or individually-metered Residential Customer's account in accordance with the following:

(1) The applicant maintains an active DC Water account and is responsible for paying for water and sewer services and/or the CRIAC;

(2) DOEE has notified DC Water that the customer has met the requirements of applicable laws and regulations and is eligible to receive the CAP3 benefits;

(3) DOEE has notified DC Water of the amount of the CAP3 benefits to be applied to the CAP3 customer's account; and

(4) DOEE has transferred funds to DC Water for the benefits applied to the customer's account.

(b) DC Water shall stop applying CAP3 benefits to a CAP3 customer's account upon receipt of notice from DOEE that the customer is no longer eligible for the CAP3 benefits, or receipt of notice from DOEE regarding the unavailability of funds.

(c) If DC Water determines that the remaining budgeted funds are insufficient to provide CAP3 benefits, DC Water may:

(1) Suspend the process for accepting CAP3 applicants; or

(2) Suspend providing CAP3 benefits to CAP3 recipients.

4102.5 DOEE CLEAN RIVERS IMPERVIOUS SURFACE AREA CHARGE RELIEF PROGRAM FOR NONPROFIT ORGANIZATIONS

(a) DC Water shall apply DOEE CRIAC Relief Program for Nonprofit Organizations (CRIAC Nonprofit Relief Program) benefits to an eligible non-profit organization's account in accordance with the following:

(1) The applicant maintains an active DC Water account and is responsible for paying for the CRIAC charges;

(2) DOEE has notified DC Water that the customer has met the requirements of applicable laws and regulations and is eligible to receive CRIAC Nonprofit Relief Program benefits;

- (3) DOEE has notified DC Water of the amount of the benefits to be applied to the nonprofit organization's account each billing period; and
 - (4) DOEE has transferred funds to DC Water for the CRIAC Nonprofit Relief Program benefits applied to the customer's account.
- (b) DC Water shall stop applying CRIAC Nonprofit Relief Program benefits to a customer's account upon notice from DOEE that the customer is no longer eligible for the CRIAC Nonprofit Relief Program benefits.
- (c) If DC Water determines that the remaining budgeted funds are insufficient to provide CRIAC Nonprofit Relief Program benefits, DC Water may:
- (1) Suspend the process for accepting CRIAC Nonprofit Relief Program applicants; or
 - (2) Suspend or adjust providing CRIAC Nonprofit Relief Program benefits to CRIAC Nonprofit Relief Program recipients.

4102.6 Nothing in this section shall be interpreted to mean that the benefits provided through DC Water's CAP or CAP2 Programs or DOEE's CAP3 or CRIAC Nonprofit Relief Programs are an entitlement, continuing or otherwise.

4102.7 For the purposes of this section, the term "SMI" means the state median income as determined on an annual basis by the U.S. Department of Health and Human Services (HHS).

4102.8 For the purposes of this section, the term "AMI" means the Area Median Income (AMI), alternately referred to as the HUD Area Median Family Income (HAMFI), determined on an annual basis by the U.S. Department of Housing and Urban Development (HUD).