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State/Territory Name: Kentucky

State Plan Amendment (SPA) #: 19-0006

This file contains the following documents in the order listed:

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

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
61 Forsyth Street S.W. Suite 4T20
Atlanta, Georgia 30303



Atlanta Regional Operations Group

October 31, 2019

Carol H. Steckel, Commissioner
Department for Medicaid Services
275 East Main Street, 6WA
Frankfort, KY 40621-0001

Re: Kentucky State Plan Amendment 19-0006

Dear Ms. Steckel:

We have reviewed the proposed Kentucky state plan amendment, KY 19-0006, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on October 29, 2019. The purpose of the amendment is to request an exemption to the requirement to enter into a contract with a Recovery Audit Contractor (RAC) pursuant to Section 1902(a)(42)(B)(i) of the Social Security Act.

Based on the information provided, the Medicaid State Plan Amendment KY 19-0006 was approved on October 31, 2019. This amendment is effective for the two-year period of April 1, 2020 through April 1, 2022. We are enclosing the approved HCFA-179 and a copy of the new state plan pages.

If you have any additional questions or need further assistance, please contact Melanie Benning at (404) 562-7414 or Melanie.Benning@cms.hhs.gov.

Sincerely,

/s/

Davida R. Kimble
Acting Deputy Director
Division of Medicaid Field Operations South

Enclosures

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SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5.1 Medicaid Recovery Audit Contractor Program

Citation	<input type="checkbox"/>	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)(i) Of the Social Security Act	<input checked="" type="checkbox"/>	The State is seeking an exception to establishing such program for the following reasons:

On 8/16/19, the Commonwealth of Kentucky was informed by our current RAC, Optum that they will not be interested in contracting with the Commonwealth after the contract ends in 3/31/20. Optum has been our sole respondent to our last two (2) RFP postings RFP 758 1700000001 (current contractual agreement effective 4/4/17)) and RFP 758 1000000342 (prior contractual agreement effective 10/4/10).

After consulting with CMS and observing the trends in other states (and our experience with lack of responses in the bidding process), the Commonwealth does not believe it is practical to put out a proposal at this time. The Commonwealth also believes that by utilizing alternative resources that provider recovery will be more successful than our current Recovery Audit Contractor who has struggled with the implementation of the MCO recovery since 4/4/17. We believe our alternative resources will align with federal guidelines and program initiatives to detect and protect the State Medicaid Program from fraud and abuse by providers and recipients as applicable.

Our Alternative Resources are as follows:

The Commonwealth intends to continue the utilization of the Joint Operating Agreement with the CMS Unified Program Integrity Contractor (UPIC), AdvanceMed, to include audits of the providers that the Kentucky RAC previously conducted. We are also going to expand our Managed Care Organizations (MCO) audits with AdvanceMed to include data driven analytics (algorithms) to identify overpayments (and underpayments as applicable). The Commonwealth is also researching the possibility of contracting with a state university to identify possible overpayment (and underpayment if applicable) on both MCO encounters **(and the actual claims if necessary) and Fee for Service (FFS) claims.**

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5.1 Medicaid Recovery Audit Contractor Program (EXCEPTIONS)

Citation	Exception
Section 1902(a)(42)(B)(ii)(I) of the Act	<input type="checkbox"/> The State/Medicaid Agency has contract of the types(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. Place a check mark to provide assurance of the following: <input type="checkbox"/> The State will make payments to the RAC(S) only from amounts recovered. <input type="checkbox"/> 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	<p>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):</p> <input type="checkbox"/> 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. <input type="checkbox"/> 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 <input type="checkbox"/> 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	<input type="checkbox"/> 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	<input type="checkbox"/> The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5.1 Medicaid Recovery Audit Contractor Program (Exemptions)

- 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 a 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 contractors or entities performing audits of entities receiving payments under the State Plan or waiver in the State, and/or State and Federal law enforcement entities and the CMS Medicaid Integrity Program

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

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TN No. 19-006
Supersedes
TN No. 12-003

Approval Date: 10/31/19

Effective Date: April 1, 2020

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

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