DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services 1301 Young Street, Room 833 Dallas, Texas 75202



Division of Medicaid & Children's Health, Region VI

March 9, 2011

Our Reference: SPA TX 10-091

Mr. Billy Millwee Associate Commissioner for Medicaid & CHIP Health and Human Services Commission Post Office Box 13247 Mail Code: H100 Austin, Texas 78711

Dear Mr. Millwee:

We have reviewed the State's proposed amendment to the Texas State Plan submitted under Transmittal Number 10-091, dated December 29, 2010. This state plan amendment adds the Recovery Audit Contractors (RAC) to the Medicaid program.

Additionally, please note that when the State submits a State Plan Amendment (SPA) that may impact Indians or Indian health providers, CMS will look for evidence of the State's Tribal consultation process for that SPA. Pursuant to the new section 1902(a) (73) of the Act added by section 5006(e) of the American Recovery and Reinvestment Act (ARRA) of 2009, the State must submit evidence to CMS regarding the solicitation of advice prior to submission of the State Plan Amendment. Such consultation must include all federally-recognized tribes, Indian Health Service and Urban Indian Organizations within the State.

Based on the information submitted, we have approved the amendment for incorporation into the official Texas State Plan with an effective date change of December 31, 2010. A copy of the CMS-179 and the approved plan pages are enclosed with this letter.

If you have any questions, please contact Cheryl Rupley at (214) 767-6278.

Sincerely,

/s/

Bill Brooks Associate Regional Administrator

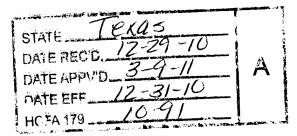
Enclosures

cc: Emily Zalkovsky, Policy Development Support

DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR MEDICARE AND MEDICAID SERVICES

FORM APPROVED OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF	1. TRANSMITTAL NUMBER:	2. STATE:
STATE PLAN MATERIAL	10-091	TEXAS
FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES	3. PROGRAM IDENTIFICATION: TITI	E XIX OF THE SOCIAL
	SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR	4. PROPOSED EFFECTIVE DATE:	
CENTERS FOR MEDICARE AND MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	December 94, 99	40
5. TYPE OF PLAN MATERIAL (Circle One):	December 31, 20	10
	CONSIDERED AS NEW PLAN	AMENDMENT
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Sep		AMENDMENT
6. FEDERAL STATUTE/REGULATION CITATION:		E ATTACHMENT
Social Security Act 1902(a)(42)(B)(i)	a. FFY 2011 \$0	
30Clai 36Culity ACt 1502(a)(42)(b)(1)	b. FFY 2012 \$0 c. FFY 2013 \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:	PAGE NUMBER OF THE SUPERS OR ATTACHMENT (If Applicable):	
SEE ATTACHMENT TO BLOCKS 8 & 9	SEE ATTACHMENT TO BLOCKS 8 8	9
10. SUBJECT OF AMENDMENT:		
The proposed amendment is being submitted to comply with the Centers for Medicare & Medicaid Services (CMS) directives to implement Section 6411 of the Affordable Care Act, Expansion of the Recovery Audit Contractor (RAC) Program.		
11. GOVERNOR'S REVIEW (Check One):		
,		to Governor's Office
GOVERNOR'S OFFICE REPORTED NO COMMENT	this date. Comments, if any, will be for	warded upon receipt.
COMMENTS OF GOVERNOR'S OFFICE ENCLOSED		
NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL 12. SIGNATURE OF STATE AGENCY OFFICIAL:	40 DETUGNITO	
12. SIGNATORS OF STATE AGENCY OFFICIAL.	16. RETURN TO:	
	Billy R. Millwee	
	State Medicaid Director Post Office Box 13247, MC: H-100	
· · · · · · · · · · · · · · · · · · ·	Austin, Texas 78711	
14. TITLE: State Medicaid Director		
15. DATE SUBMITTED:		
December 28, 2010		
FOR REGIONAL OFFICE USE ONLY		
17. DATE RECEIVED: 29 December, 2010	18. DATE APPROVED: 9 March, 2011	
PLAN APPROVED - ONE COPY ATTACHED		
	20. SIGNATURE OF REGIONAL OFFICIA	V. :
31 December, 2010		
21. TYPED NAME: Bill Brooks	22. IIILE: Associate Regional Adr	
	Division of Medicaid &	Children's Health
23. REMARKS:		



State of Texas Page 36d

4.5b - Medicaid Recovery Audit Contractor Program (continued)

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.
The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.
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.

TN: 10-91 Approval Date: 3-9-11 Effective Date: 12-31-10

SUPERSEDES: NONE - NEW PAGE

STATE TEXAS DATE DECID 12-29-10	
DATE APPV'D 3-9-11	А
DATE EFF 12-31-10 HGFA 179 10-91	

State of Texas Page 36c

4.5b - Medicaid Recovery Audit Contractor Program (continued)

Citation	
Section 1902 (a)(42)(B)(ii)(II)(aa) of the Act	The following payment methodology shall be used to determine State payments to Medicaid RAC(s) for recovered overpayments (e.g., the percentage of the contingency fee): The State attests that if the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RAC(s), as published in the Federal Register, the State will only submit for FFP up to the amount equivalent to that published rate.
Section 1902 (a)(42)(B)(ii)(II)(bb) of the Act	The following payment methodology will be used to determine State payments to Medicaid RAC(s) for underpayments: The specific payment methodology will be contingent on the grant of legislative authority.
	The State will submit a justification seeking to pay the Medicaid RAC(s) a contingency fee higher than the highest contingency fee rate paid to Medicare RAC(s) as published in the Federal Register.
Section 1902 (a)(42)(B)(ii)(III) of the Act	The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).

TN: 10-91	Approval Date: 3-9-11	Effective Date: <u>12-31-10</u>
	SUPERSEDES. NONE - NEW PAGE	
Supersedes TN:		

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State of Texas Page 36b

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of Texas

4.5 Medicaid Agency Fraud Detection and Investigation

4.5b - Medicaid Recovery Audit Contractor Program

<u>Citation</u>	
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.
	X The State is seeking an exception to establishing such program for the following reasons:
	The Medicaid RAC program cannot be established until legislative authority has been granted. The Texas Legislature is currently in session, and a bill to establish the program has been drafted. The legislative session ends on May 30, 2011, but HHSC will not know whether authority to establish the RAC program has been given until the bill passes and the Governor signs the bill into law, which could be as late as June 19, 2011. If the bill passes and is signed into law, the effective date may not be until September 1, 2011.
Section 1902(a)(42)(B)(ii)(I) of the Act	This state plan amendment (SPA) will be in effect until October 1, 2011. By that date, the State will submit to CMS a new SPA, which will either: 1) establish the State RAC program, or 2) seek an exception to establishing a RAC program, based on a lack of legislative authority.
	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.
	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.

TN: 10-91 Approval Date: 3-9-11 Effective Date: 12-31-10

Supersedes TN: SUPERSEDES: NONE - NEW PAGE