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State/Territory Name: Montana

State Plan Amendment (SPA) #: 21-0008

This file contains the following documents in the order listed:

1) Approval Letter
2) CMS 179 Form
3) Approved SPA Pages
April 28, 2021

Marie Matthews, Medicaid & CHIP Director  
Montana Department of Public Health & Human Services  
P.O. Box 4210  
Helena, MT  59604

Dear Ms. Matthews:

We have completed our review of the enclosed State Plan Amendment (SPA) Transmittal Number MT-21-0008. This amendment implements a full two-year exception to the federal requirement for a Recovery Audit Contractor (RAC), which will expire on April 1, 2023.

Please be informed that this State Plan Amendment was approved on April 27, 2021 with an effective date of April 1, 2021. Enclosed is a copy of the CMS 179 summary page and the amended plan page(s).

If you have any questions or need further assistance, please contact Barbara Prehmus at (303) 844-7472 or barbara.prehmus@cms.hhs.gov.

Sincerely,

James G. Scott, Director  
Division of Program Operations

Enclosures

cc:  Adam Meier, Department Director  
Mary Eve Kulawik
**TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL**

**FOR:** HEALTH CARE FINANCING ADMINISTRATION

**TO:** REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. TRANSMITTAL NUMBER: 21-0008
2. STATE: Montana
3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDIKAID)
4. PROPOSED EFFECTIVE DATE: 04/01/2021

5. **TYPE OF PLAN MATERIAL (Check One):**
   - [ ] NEW STATE PLAN
   - [X] AMENDMENT TO BE CONSIDERED AS NEW PLAN
   - [ ] AMENDMENT

   COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. **FEDERAL STATUTE/REGULATION CITATION:**
   If applicable, provide CFR citation:
   42 CFR 455.502

7. **FEDERAL BUDGET IMPACT:**
   a. FFY21 (6 months): $0
   b. FFY22 (12 months): $0

8. **PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:**
   Citation 4.5 Medicaid Recovery Audit Contractor Program, Pages 1-2 of 2.

9. **PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):**
   Citation 4.5 Medicaid Recovery Audit Contractor Program, Pages 1-2 of 2.

10. **SUBJECT OF AMENDMENT:**

    The purpose of this amendment is to request an extension of the exception to the requirement of having a recovery audit contractor (RAC). The update is necessary to be in compliance with 42 CFR 455.12. In 2017, Montana enacted MCA 53-6-1402, which restricts the auditing time frame for both contractors and the State’s Surveillance and Utilization Unit to only allow requests of up to six months of records from Medicaid providers to review. The restriction led to Montana not receiving any proposals for the RAC Request for Proposals. CMS approved Montana’s request to continue its exception to the RAC requirements through April 30, 2021. This SPA requests to continue its exception to the RAC requirements for an additional two years, through April 30, 2023.

11. **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
    - [X] OTHER, AS SPECIFIED: Single Agency Director Review

12. **SIGNATURE OF STATE AGENCY OFFICIAL:**

13. **TYPED NAME:** Marie Matthews

14. **TITLE:** State Medicaid Director

15. **DATE SUBMITTED:** 3-27-2021

**FOR REGIONAL OFFICE USE ONLY**

16. **RETURN TO:** Montana Department of Public Health and Human Services
    Marie Matthews
    Attn: Mary Eve Kulawik
    PO Box 4210
    Helena MT 59620

17. **DATE RECEIVED:** March 27, 2021
18. **DATE APPROVED:** April 27, 2021

19. **EFFECTIVE DATE OF APPROVED MATERIAL:** April 1, 2021
20. **SIGNATURE OF REGIONAL OFFICIAL:**

21. **TYPED NAME:** James G. Scott
22. **TITLE:** Director, Division of Program Operations

23. **REMARKS:**

FORM HCFA-179 (07-92)
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.

The State is seeking an exception to establishing such program for the following reasons:

- Montana is seeking an exception extension from the Medicaid recovery audit contract requirement. The State attempted a formal procurement for recovery audit services that would be in line with Section 1902(a) (42) of SSA. However, the State did not receive any bids when solicited. Additionally, MCA 53-6-1402, which went into effect July 1, 2017, places constraints on the Recovery Audit Contractor’s (RAC) ability to perform large scale audits, therefore limiting the amount of potential income for their services. CMS granted the State a two-year exception. The State is requesting an additional two-year exception from the RAC requirement.

The State/Medicaid agency will have contracts of the type(s) listed in section 1902(a)(42)(B)(ii)(I) of the Act in place. 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.

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.
- 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.
- 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.
State/Territory: **Montana**

<table>
<thead>
<tr>
<th>Section 1902 (a)(42)(B)(ii) (II)(bb) of the Act</th>
<th>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):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1902 (a)(42)(B)(ii) (III) of the Act</td>
<td>Percentage of the contingency fee will be the payment methodology used to determine State payments to Medicaid RACs for identification and recovery of overpayments.</td>
</tr>
<tr>
<td>Section 1902 (a)(42)(B)(ii) (IV)(aa) of the Act</td>
<td>The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).</td>
</tr>
<tr>
<td>Section 1902(a)(42)(B)(ii)(IV) (bb) of the Act</td>
<td>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.</td>
</tr>
<tr>
<td>Section 1902(a)(42)(B)(ii)(IV) (cc) of the Act</td>
<td>The State assures that the recovered amounts will be subject to a State’s quarterly expenditure estimates and funding of the State’s share.</td>
</tr>
</tbody>
</table>

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.