Table of Contents

State/Territory Name: West Virginia

State Plan Amendment (SPA) #: 21-0003

This file contains the following documents in the order listed:

1) Approval Letter
2) CMS 179 Form/Summary Form
3) Approved SPA Pages
May 19, 2021

Cynthia Beane, MSW, LCSW
Commissioner
Bureau for Medical Services
350 Capitol Street, Room 251
Charleston, WV 25301-3706

Re: West Virginia State Plan Amendment (SPA) 21-0003

Dear Commissioner Beane:

We reviewed your proposed Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 21-0003. This amendment is a request for an exception from the Medicaid Recovery Audit Contractor (RAC) requirements.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations. Section 1902(a)(42)(B) of the Social Security Act requires the Bureau for Medical Services (BMS) to have a RAC program, and 42 CFR 455.516 allows BMS to be excepted from the RAC requirements by submitting to CMS a written justification for CMS to review and approve through the SPA process. This letter is to inform you that West Virginia’s Medicaid SPA Transmittal Number 21-0003 is approved effective January 1, 2021 for a two-year period that expires on December 31, 2022. If BMS secures a RAC prior to the end to this two-year period, a SPA will be needed to demonstrate that BMS has come into compliance with the RAC requirements.

If you have any questions, please contact Dan Belnap at 215-861-4273 or via email at Dan.Belnap@cms.hhs.gov.

Sincerely,

James G. Scott, Director
Division of Program Operations
## TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

**FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

### 1. TRANSMITTAL NUMBER
- 21003

### 2. STATE
- West Virginia

### 3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

### 4. PROPOSED EFFECTIVE DATE
- January 1, 2021

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

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

### 6. FEDERAL STATUTE/REGULATION CITATION
- 42 CFR 455.516

### 7. FEDERAL BUDGET IMPACT
- a. FFY 2021 $Unknown
- b. FFY 2022 $Unknown

### 8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
- Attachment 4.5-A, page 1 and 2

### 9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)
- Attachment 4.5, page 1 and 2

### 10. SUBJECT OF AMENDMENT
- Recovery Audit Contractor

### 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
- [ ] OTHER, AS SPECIFIED

### 12. SIGNATURE OF STATE AGENCY OFFICIAL
- [Signature]

### 13. TYPED NAME
- Cynthia Beane

### 14. TITLE
- Commissioner, Bureau for Medical Services

### 15. DATE SUBMITTED
- March 8, 2021

### 16. RETURN TO
- Bureau for Medical Services
- 350 Capitol Street Room 251
- Charleston West Virginia 25301

### FOR REGIONAL OFFICE USE ONLY

### 17. DATE RECEIVED
- March 8, 2021

### 18. DATE APPROVED
- May 19, 2021

### PLAN APPROVED - ONE COPY ATTACHED

### 19. EFFECTIVE DATE OF APPROVED MATERIAL
- January 1, 2021

### 20. SIGNATURE OF REGIONAL OFFICIAL
- [Signature]

### 21. TYPED NAME
- James G. Scott

### 22. TITLE
- Director, Division of Program Operations

### 23. REMARKS

Pen and Ink change made with state's permission to complete box 7 to indicate the Governor's office submitted comments and to complete box 15 to indicate a 3/8/21 submission date (db)

*Instructions on Back*
PROPOSED SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5-A Medicaid Recovery Audit Contractor Program

<table>
<thead>
<tr>
<th>Citation</th>
<th>__ 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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1902(a)(42)(B)(i) of the Social Security Act</td>
<td>__ The State/Medicaid agency is seeking an exception to establishing such program for the following reasons:</td>
</tr>
<tr>
<td></td>
<td>During the period when the State retained a Recovery Audit Contractor (RAC) (October 1, 2012 – September 30, 2013), there was not sufficient revenue generated under the contract to fund an adequate contingency fee, and the vendor requested that the contract be terminated. The State subsequently initiated a procurement for a new RAC vendor and received no vendor interest.</td>
</tr>
<tr>
<td></td>
<td>On February 8, 2018, CMS approved SPA 17-002 providing a RAC waiver that was effective October 1, 2017 through September 30, 2019. The State maintains a robust program integrity program for fee-for-service (FFS) payments through a combination of program integrity processes and claims data system edits. Prior to and since August 2019, the State has taken steps toward procuring a RAC by including the request for a RAC vendor in the State’s ongoing TPL vendor procurement. The State subsequently awarded the contract on April 1, 2021 and is scheduled to begin implementation of RAC services by July 1, 2021.</td>
</tr>
<tr>
<td></td>
<td>__ 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.</td>
</tr>
<tr>
<td></td>
<td>Place a check mark to provide assurance of the following:</td>
</tr>
<tr>
<td></td>
<td>__ The State will make payments to the RAC(s) only from amounts recovered.</td>
</tr>
<tr>
<td></td>
<td>__ The State will make payments to the RAC(s) on a contingent basis for collecting overpayments</td>
</tr>
<tr>
<td></td>
<td>__ 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):</td>
</tr>
<tr>
<td></td>
<td>__ 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.</td>
</tr>
<tr>
<td></td>
<td>__ 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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TN No.: 21-003</th>
<th>Approval Date: 5/19/21</th>
<th>Effective Date: 01/01/2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supersedes: 17-002</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citation</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Section 1902(a)(42)(B)(ii)(bb) of the Act</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>Section 1902(a)(42)(B)(ii)(III) of the Act</td>
<td>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): The State will pay a contingency fee to the RAC. The contingency fee shall be no more than the highest Medicare RAC in effect at the time of payment.</td>
<td></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>
<td></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>
<td></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>
<td></td>
</tr>
<tr>
<td></td>
<td>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.</td>
<td></td>
</tr>
</tbody>
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