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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

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

601 E. 12th St., Room 355

Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

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,

A solid black rectangular box used to redact the signature of James G. Scott.

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

2 1 — 0 0 3

2. STATE

West Virginia3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

January 1, 20215. TYPE OF PLAN MATERIAL (*Check One*)☐ NEW STATE PLAN☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN☒ AMENDMENTCOMPLETE 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 \$ Unknownb. 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☐ OTHER, AS SPECIFIED☒ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL

e@wv.gov C =

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

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)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: West Virginia

Attachment 4.5-A
Page 1

PROPOSED SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5-A Medicaid Recovery Audit Contractor Program

<p><u>Citation</u></p> <p>Section 1902(a)(42)(B)(i) of the Social Security Act</p> <p>Section 1902(a)(42)(B)(ii)(I) of the Act</p> <p>Section 1902(a)(42)(B)(ii)(I) of the Act</p>	<p><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.</p> <p><input checked="" type="checkbox"/> The State/Medicaid agency is seeking an exception to establishing such program for the following reasons:</p> <p>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.</p> <p>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.</p> <p><input type="checkbox"/> The State/Medicaid agency has contracts of the type(s) listed in section 1902(a)(42)(B)(ii)(1) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute.</p> <p>Place a check mark to provide assurance of the following:</p> <p><input type="checkbox"/> The State will make payments to the RAC(s) only from amounts recovered.</p> <p><input type="checkbox"/> The State will make payments to the RAC(s) on a contingent basis for collecting overpayments</p> <p><input type="checkbox"/> 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> <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.</p> <p><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.</p>
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TN No.: 21-003	Approval Date: 5/19/21	Effective Date:
Supersedes: 17-002		01/01/2021

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: West Virginia

Attachment 4.5-A

Page 2

<u>Citation</u> Section 1902(a)(42)(B)(ii)(III)(bb) of the Act	<p>___ 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.</p>
Section 1902(a)(42)(B)(ii)(III) of the Act	<p>___ 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.</p>
Section 1902(a)(42)(B)(ii)(IV)(aa) of the Act	<p>___ The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).</p>
Section 1902(a)(42)(B)(ii)(IV)(bb) of the Act	<p>___ 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.</p>
Section 1902(a)(42)(B)(ii)(IV)(cc) of the Act	<p>___ The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.</p> <p>___ 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.</p>

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Supersedes: 17-002		01/01/2021