

Table of Contents

State/Territory Name: West Virginia

State Plan Amendment (SPA) #: 22-0005

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 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

April 29, 2022

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) 22-0005

Dear Commissioner Beane:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 22-0005. This amendment proposes to add a Recovery Audit Contractor (RAC) and requests that CMS use its regulatory authority under 42 CFR §455.516 to grant the following three exceptions to the Medicaid RAC contracting requirements:

1. Allow the RAC to use a panel of physicians to perform the activities of the medical director required by 42 CFR §455.508(b);
2. Allow the RAC to review claims that are up to five years old, rather than the three-year limit described in 42 CFR §455.508(f); and
3. Allow the contingency fee paid to the RAC to exceed that of the highest Medicare RAC, and allow federal financial participation (FFP) for the full amount of the contingency fee paid to the RAC, waiving requirements of 42 CFR §455.510(b)(4).

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations. This letter is to inform you that West Virginia Medicaid SPA 22-0005 was approved on April 27, 2022 with an effective date of January 1, 2022.

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

Sincerely,

A black rectangular box redacting the signature of Ruth A. Hughes.

Ruth A. Hughes, Acting Director
Division of Program Operations

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 2 — 0 0 0 5

2. STATE

WV

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT

XIX XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

01/01/2022

5. FEDERAL STATUTE/REGULATION CITATION

42 CFR 455.516

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY 2022 \$ 52,280
b. FFY 2023 \$ 444,120

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 4.5-A, pages 1 and 2

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

Attachment 4.5A, pages 1 and 2

9. SUBJECT OF AMENDMENT

Recovery Audit Contractor

10. 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:

11. SIGNATURE OF STATE AGENCY OFFICIAL

12. TYPED NAME
Cynthia Beane

13. TITLE
Commissioner, Bureau for Medical Services

14. DATE SUBMITTED
03/16/2022

15. RETURN TO
Bureau for Medical Services
350 Capitol Street Room 251
Charleston, West Virginia 25301

FOR CMS USE ONLY

16. DATE RECEIVED
March 16, 2022

17. DATE APPROVED
04/27/2022

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
January 1, 2022

19. SIGNATURE OF APPROVING OFFICIAL
[Redacted]

21. TITLE OF APPROVING OFFICIAL
Acting Director, Division of Program Operations

20. TYPED NAME OF APPROVING OFFICIAL
Ruth A. Hughes

22. REMARKS

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> Section 1902(a)(42)(B)(i) of the Social Security Act</p>	<p><input checked="" 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: The State is seeking an exception to 42 CFR § 455.508(b), the requirement that the RAC must hire a minimum of 1.0 FTE Contractor Medical Director. The State shall require the RAC to maintain and utilize a panel of Physicians with a variety of specialties, including a contracted Physician with a West Virginia license. The panel consists of approximately 400 physicians representing over 100 specialties.</p> <p>The State is seeking an exception to 42 CFR § 455.508(f), the requirement that the RAC review claims within a maximum look-back period of three years. The State would like to define the look-back period to five (5) years.</p>
<p>Section 1902(a)(42)(B)(ii)(I) of the Act</p>	<p><input checked="" 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 checked="" type="checkbox"/> The State will make payments to the RAC(s) only from amounts recovered.</p> <p><input checked="" type="checkbox"/> The State will make payments to the RAC(s) on a contingent basis for collecting overpayments</p>
<p>Section 1902(a)(42)(B)(ii)(II)(aa) of the Act</p>	<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> <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> <p><input checked="" 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.</p> <p>In light of the State's small size and relatively low capacity to absorb costs, the State is asking CMS to pay FFP for the full amount of the contingency fee including that above the highest paid Medicare rate.</p>

TN No.: 22-0005	Approval Date: 04/27/2022	Effective Date: 01/01/2022
Supersedes: 21-0003		

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: West Virginia

Attachment 4.5-A
Page 2

Section 1902(a)(42)(B)(ii)(II)(bb) of the Act	<p><input checked="" 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): The State will pay a contingency fee to the RAC.</p>
Section 1902(a)(42)(B)(ii)(III) of the Act	<p><input checked="" type="checkbox"/> 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)(aa) of the Act	<p><input checked="" type="checkbox"/> 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)(bb) of the Act	<p><input checked="" type="checkbox"/> 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>
Section 1902(a)(42)(B)(ii)(IV)(cc) of the Act	<p><input checked="" type="checkbox"/> 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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