Table of Contents

State/Territory Name: New Mexico

State Plan Amendment (SPA) #: 21-0012

This file contains the following documents in the order listed:

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Medicaid and CHIP Operations Group

January 24, 2022

Ms. Nicole Comeaux
Director
Medical Assistance Division
New Mexico Human Services Department
2025 South Pacheco Drive
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Re: New Mexico State Plan Amendment (SPA) 21-0012

Dear Ms. Comeaux:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 21-0012. This amendment proposes to implement updates to third party liability in order to comply with changes required in the Bipartisan Budget Act (BBA) of 2018 and the Medicaid Services Investment and Accountability Act (MSIAA) of 2019.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations 42 CFR 139(b)(3)(i), 42 CFR 433.139(b)(3)(ii)(B), Section 1902(a)(25)(E) of the Act. This letter is to inform you that New Mexico Medicaid SPA 21-0012 was approved on January 24, 2022, with an effective date of December 31, 2021

If you have any questions, please contact Peter Banks at (415) 744-3782 or via email at Peter.Banks@cms.hhs.gov

Sincerely,

[redacted]
Digitally signed by James G. Scott -S
Date: 2022.01.24 14:28:52 -06'00'

James G. Scott, Director
Division of Program Operations

cc:
- Nicole Comeaux
- Valerie Tapia
- Julie Lovato

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

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 21-0012

2. STATE: NM

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
December 31, 2021

5. FEDERAL STATUTE/REGULATION CITATION
42 CFR 139(b)(3)(i); 42 CFR 433.139(b)(3)(ii)(B); Section 1902(a)(25)(E) of the Act

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 22 $ 0
b. FFY 23 $ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Attachment 4.22-B, pgs. 1, 2, 3

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
Attachment 4.22-B, pgs. 1, 2, 3

9. SUBJECT OF AMENDMENT
Third Party Liability (TPL) - this SPA makes changes to rules related to special treatment of certain types of care and payment to comply with the Bipartisan Budget Act (BBA) of 2018 and the Medicaid Services Investment and Accountability Act (MSIAA) of 2019.

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
[redacted]

12. TYPED NAME
Nicole Comeaux

13. TITLE
Director, Medical Assistance Division

14. DATE SUBMITTED
December 17, 2021

15. RETURN TO
Nicole Comeaux, J.D., M.P.H., Director
Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504-2348

FOR CMS USE ONLY

16. DATE RECEIVED
December 17, 2021

17. DATE APPROVED
January 24, 2022

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
December 31, 2021

19. SIGNATURE OF APPROVING OFFICIAL
[redacted]
Digitally signed by James G. Scott -S
Date: 2022.01.24 14:29:27 -06'00'

20. TYPED NAME OF APPROVING OFFICIAL
James G. Scott

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

22. REMARKS

Instructions on Back

1. THE NEW MEXICO MEDICAID PROGAM WILL "PAY & CHASE" IN SITUATIONS AS REQUIRED BY THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (42 U.S.C. 1396a (a) (25))

   A. Claims for preventive pediatric care (including early and periodic screening and diagnosis & treatment services), based on diagnosis codes provided by HCFA.

      (1) Inpatient and outpatient hospital, pharmacy and prenatal services, including labor, delivery and postpartum care services claims, are excluded from this provision and will continue to be "cost avoided". The State shall use standard coordination of benefits cost avoidance when processing claims for prenatal services, including labor and delivery and postpartum care claims.

      (2) The State shall make payments without regard to third party liability for pediatric preventive services unless a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days has been made.

   B. Services provided to individuals on whose behalf Child Support Enforcement is being carried out by the N.M. IV-D agency, if payment has not been made by such third party within 100 days after the date the provider of such services has initially submitted a claim to such third party for payment for such services;

      (1) Failure of the third party to pay for the services within 100 days must be certified in writing with each claim submitted by the provider seeking Medicaid payment.

      (2) The provider must certify in writing with each claim submitted that if payment for the services being billed to Medicaid are subsequently paid by the third party, the lower of the third party payment or the Medicaid payment will be immediately refunded to the New Mexico Human Services Department.

2. METHOD USED BY THE NEW MEXICO MEDICAID PROGRAM TO DETERMINE PROVIDER COMPLIANCE WITH THE THIRD PARTY BILLING REQUIREMENTS

   A. Individuals on whose behalf medical support is being enforced by Child Support Enforcement are identified to the Medicaid fiscal agent.

   B. Based on information referred to in 2A., the Medicaid fiscal agent applies cost avoidance edits to ensure the provider has billed the party responsible for the medical support. If the provider reports that billing has occurred, but no payment was made, the claim may be paid and referred for pay and chase.

3. THRESHOLDS

A. For cases in which a third party has already been identified, all claims pertinent to the type of coverage will be routinely returned to the provider for filing with the third party. For cases in which a liable third party is newly identified, the Human Services Department will not seek reimbursement for claims already filed with the Department when the amount to be recovered from the third party would be less than $50. The Department has determined that the recovery of payment made for less than this amount would not be cost effective because of the staff time, reproducing and mail costs involved. If, after a claim has been paid, the Department learns of the existence of a liable third party, it will seek reimbursement from the third party within 30 days after the end of the month in which it learned of the existence of the liable third party. Claims accumulated for a particular provider up to this point will be applied in establishing whether such collection is cost effective. Pursuant to section 3904.5 of the State Medicaid Manual, thresholds under $100 do not require justification.

B. In cases of potential liability, such as an accident or work-related injury, the Human Services Department may choose not to pursue tort liability when the amount to be recovered would be less than $200. Pursuant to section 3904.5 of the State Medicaid Manual, thresholds under $250 do not require justification.

C. For claims in which a liable third party has been identified, the Department will pay the amount remaining, under the Title XIX payment schedule, after the amount of the third party's liability has been established. Payment will not be withheld if third party liability or the amount of liability, the Department will pay the full amount allowed under the Title XIX payment schedule and seek reimbursement from any liable third party to limit of legal liability. In personal injury cases where liability has been established, claims related to the injury will be cost-avoided.

4. ASSURANCE THAT MEDICAID PROVIDERS FOLLOW RESRICTIONS SPECIFIED IN 42 CFR 447.20

A. Sanction of providers who seek payment from Medicaid recipients for balances due after payment from an insurance company when the insurance payment was at least equal to what Medicaid would have paid for the same service.

(1) Upon determination by the Director of the Medical Assistance Division that a provider has sought payment for a service from a Medicaid recipient after receiving payment for that service from that recipient's health insurance company or other third party in an amount at least equal to the amount that Medicaid would have allowed for that same service, an amount equal to three times the amount sought from the recipient will be deducted from the provider's next Medicaid payment. This provision is included in Section 1902 of the Social Security Act (42 u.s.c. 1396a).

B. Providers refusing to furnish services covered under the plan on account of a third party's potential liability for the service(s) are subject to termination of their provider agreement.