

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
150 S. Independence Mall West  
Suite 216, The Public Ledger Building  
Philadelphia, Pennsylvania 19106-3499



**Region III/Division of Medicaid and Children's Health Operations**

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SWIFT # 112820174043

**February 8, 2018**

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

Dear Commissioner Beane:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of West Virginia's State Plan Amendment (SPA) 17-002, Recovery Audit Contractor (RAC). With this SPA, West Virginia is requesting an exception from the RAC requirements of Section 1902(a)(42)(B)(i) of the Social Security Act. We are approving this SPA with an effective date of October 1, 2017 and granting the requested exception for a period of two years, through September 30, 2019. At that time, West Virginia will either need to come into compliance with the RAC requirements or submit to CMS a SPA requesting another exception.

Enclosed is a copy of the CMS Summary Page (CMS-179 form) and the approved State Plan pages.

We appreciate the cooperation and effort provided by your staff throughout this process. If you have further questions about this SPA, please contact Dan Belnap of my staff at 215-861-4273.

Sincerely,

Francis T. McCullough  
Associate Regional Administrator

Enclosures

cc: Ryan Sims, Bureau for Medical Services

<p align="center"><b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b></p> <p align="center"><b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b></p>		1. TRANSMITTAL NUMBER: 1 7 - 0 0 2	2. STATE: West Virginia
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE October 1, 2017	
5. TYPE OF PLAN MATERIAL (Check One)			
<input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: 42 C.F.R. 455.516		7. FEDERAL BUDGET IMPACT:	
		a. FFY 2017 \$ 0	
		b. 2018 \$ 0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.5, 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):			
<input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED:			
<input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED			
<input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: /s/ Cynthia Beane		16. RETURN TO: Bureau for Medical Services 350 Capitol Street Room 251 Charleston West Virginia 25301	
13. TYPED NAME: Cynthia Beane			
14. TITLE: Commissioner, Bureau for Medical Services			
15. DATE SUBMITTED: 22-Nov-17			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED November 22, 2017		18. DATE APPROVED February 8, 2018	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: October 1, 2017		20. SIGNATURE OF REGIONAL OFFICIAL: <i>Francis T. McCullough</i>	
21. TYPED NAME: Francis McCullough		22. TITLE Associate Regional Administrator	
23. REMARKS:			

## PROPOSED SECTION 4 — GENERAL PROGRAM ADMINISTRATION

## 4.5 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>	<ul style="list-style-type: none"> <li>– 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.</li>   <li><input checked="" type="checkbox"/> The State/Medicaid agency is seeking an exception to establishing such program for the following reasons:           <p style="margin-left: 2em;">Approximately eighty percent (80%) of West Virginia's Medicaid population is enrolled in managed care and the providers treating them are not subject to recovery audit contracting. During the period when the State retained a RAC vendor, 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> </li>   <li>– 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 style="margin-left: 2em;">Place a check mark to provide assurance of the following:</p> <ul style="list-style-type: none"> <li>– The State will make payments to the RAC(s) only from amounts recovered.</li> <li>– The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.</li> </ul> </li> </ul>				
TN No:	17-002	Approval Date:	February 8, 2018	Effective Date:	10/01/2017
Supersedes:	12-001				

## PROPOSED SECTION 4 — GENERAL PROGRAM ADMINISTRATION

## 4.5 Medicaid Recovery Audit Contractor Program

<p><u>Citation</u> Section 1902(a)(42)(B)(ii)(I) 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> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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.</li> </ul>
<p>Section 1902(a)(42)(B)(ii)(II)(bb) of the Act</p>	<ul style="list-style-type: none"> <li>- 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.</li> </ul>
<p>Section 1902(a)(42)(B)(ii)(III) of the Act</p>	<ul style="list-style-type: none"> <li>- The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).</li> </ul>
<p>Section 1902(a)(42)(B)(ii)(IV)(aa) of the Act</p>	<ul style="list-style-type: none"> <li>- 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.</li> </ul>
<p>Section 1902(a)(42)(B)(ii)(IV)(bb) of the Act</p>	<ul style="list-style-type: none"> <li>- The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.</li> </ul>
<p>Section 1902(a)(42)(B)(ii)(IV)(cc) of the Act</p>	<ul style="list-style-type: none"> <li>- 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.</li> </ul>

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