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State/Territory Name: Massachusetts

State Plan Amendment (SPA)#: 23-0064

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS-179 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

February 29, 2024

Kathleen E. Walsh, Secretary
The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
One Ashburton Place, Room 1109
Boston, MA 02108

Re: Massachusetts State Plan Amendment (SPA) 23-0064

Dear Secretary Walsh:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 23-0064. This SPA proposes to confirm compliance with Third Party Liability payment of claims requirements under federal law.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations 1902(a)(25)(I). This letter is to inform you that Massachusetts' Medicaid SPA 23-0064 was approved on February 29, 2024, with an effective date of January 2, 2024.

Enclosed are copies of the approved CMS-179 summary form and the approved SPA pages to be incorporated into the Massachusetts State Plan.

If you have any questions, please contact Ambrosia Watts at (667) 414-0089 or via email at Ambrosia.Watts1@cms.hhs.gov.

Sincerely,

A large black rectangular redaction box covers the signature of James G. Scott.

James G. Scott, Director
Division of Program Operations

Enclosures

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

1. TRANSMITTAL NUMBER <u>2 3 — 0 0 6 4</u>	2. STATE <u>MA</u>
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3. PROGRAM IDENTIFICATION: TITLE ~~XIX~~ OF THE SOCIAL SECURITY ACT

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

4. PROPOSED EFFECTIVE DATE
01/02/2024

5. FEDERAL STATUTE/REGULATION CITATION

1902(a)(25)(I)

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 24 \$ 0
b. FFY 25 \$ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 4.22B p. 1-2

Attachment 4.22 Page 69

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

Attachment 4.22-B p. 1-2


Attachment 4.22 Page 69

9. SUBJECT OF AMENDMENT

An amendment to confirm compliance with Third Party Liability requirements under federal law

10. GOVERNOR'S REVIEW (Check One)

<input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT	<input checked="" type="checkbox"/> OTHER, ASSPECIFIED:
<input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED	Not required under 42 CFR 430.12(b)(2)(i)
<input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL	

11. SIGNATURE OF STATE AGENCY OFFICIAL


12. TYPED NAME
Mike Levine

13. TITLE
Assistant Secretary for MassHealth

14. DATE SUBMITTED
12/29/2023

15. RETURN TO

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
One Ashburton Place, 3rd Floor
Boston, MA 02108

FOR CMS USE ONLY

16. DATE RECEIVED 12/29/2023	17. DATE APPROVED 2/29/2024
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PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL 1/2/2024	19. SIGNATURE OF APPROVING OFFICIAL 
20. TYPED NAME OF APPROVING OFFICIAL James G. Scott	21. TITLE OF APPROVING OFFICIAL Director Division of Program Operations

22. REMARKS

Boxes 7 and 8: State authorized pen and ink change on 2/28/2024 to add Attachment 4.22 Page 69

State Plan Under Title XIX of the Social Security Act
State: Massachusetts

Citation

4.22 Third Party Liability

42 CFR 447.13

(a) The Medicaid agency meets all the requirements of:

- (1) 42 CFR 433.138 and 433.139
- (2) 42 CFR 433.145 through 433.148
- (3) 42 CFR 433.151 through 433.154
- (4) Sections 1902 (a) (25) (H) and (I) of the Act.*

1902 (a) (25) (H) and (I)
of the Act.

42 CFR 433.138 (f)

(b) **Attachment 4.22-A** —

(1) Specifies the frequency with which the data exchanges required in Section 433.138 (d) (1), (d) (3) and (d) (4) and the diagnosis and trauma code edits required in Section 433.138 (e) are conducted;

42 CFR 433.138 (g) (1) (ii)
and (2) (ii)

(2) Describes the methods the agency uses for meeting the following requirements contained in Section 433.138 (g) (1) (i) and (g) (2) (ii);

42 CFR 433.138 (g) (3) (i)
and (iii)

(3) Describes the methods the agency uses for following up on information obtained through the state motor vehicle accident report file data exchange required under Section 433.138 (d) (4) (ii) and specifies the time frames for incorporation into the eligibility case file and into its third party data base and third party recovery unit of all information obtained through the following that identifies legally liable third party resources; and

42 CFR 433.138 (g) (4) (i)
through (iii)

(4) Describes the methods the agency uses for following up on paid claims identified under Section 433.138 (c) (methods include a procedure for periodically identifying those trauma codes that yield the highest third party collections and giving priority to following up on those codes) and specifies the time frames for incorporation into the eligibility case file and into its third party data base and third party recovery unit of all information obtained through the followup that identifies legally liable third party resources.

* The Commonwealth has enacted legislation, Sections 22-26 of Chapter 77 of the Acts of 2023, modifying Massachusetts General Law Chapter 118E, Section 23, incorporating into state law the provisions of the Consolidated Appropriations Act of 2022 relating to third-party liability in Medicaid.

State Plan under Title XIX of the Social Security Act
State: Massachusetts**Requirements for Third Party Liability Payment of Claims**

MassHealth's TPL program is designed to function primarily as a cost avoidance system. Claims for medical services, unless excluded by federal law, are cost-avoided when a third party liability policy exist within MassHealth's MMIS system. Claims paid prior to the third party coverage being entered into the claims system are pursued by a vendor for post-payment recovery as described in this attachment.

(d)

1. Monitoring provider compliance (42 CFR 433.139(b)(3)(ii)(C)):

The State Plan as referenced herein requires providers to bill third parties. When the probable liability of a third party is established, MassHealth notifies the provider that the claim was cost avoided due to the existence of TPL.

Exceptions to this procedure are those claims as specified in 42 CFR 433.139(b)(3)(i) and (ii) and any approved cost avoided waiver.

MassHealth complies with the following requirements:

- SSA Section 1902 (a)(25)(E): The Requirement for states to apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services.
- SSA Section 1902(a)(25)(E): The requirement for states to make payments without regard to potential third party liability for pediatric preventative services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days.
- SSA Section 1902(a)(25)(F): State Flexibility to make payments without regard to potential third party liability for up to 100 days for claims related to child support enforcement beneficiaries.

In a case where medical support is being enforced by the state Title IV-D Agency, the provider will be required to submit documentation that the provider has billed the third party and has not received payment from the third party.

State laws are in effect that require third parties to comply with the provisions of 1902(a)(25)(I) of the Social Security Act, including those which require third parties to provide the state with coverage, eligibility, and claims data. Specifically, per the provisions in the Consolidated Appropriations Act of 2022 (CAA), State law at M.G.L. Chapter 118E, Section 23 requires that if a responsible third party requires prior authorization for an item or service furnished to a Medicaid-eligible individual, the responsible third party must accept the authorization provided by the State that the item or service is covered under the State Plan (or waiver of such Plan) for such individual, as if such authorization was made by the third party for such item or service. As further provided by the CAA, State law also requires third-party payers to respond to a State inquiry within 60 days of receiving the inquiry.

2. Recovery from Health Insurers

State Plan under Title XIX of the Social Security Act
State: Massachusetts

The State Medicaid Agency will seek reimbursement from a liable health insurer when the State Medicaid Agency determines that the potential accumulated recovery will amount to at least \$250, or will otherwise be cost effective.

3. Recovery from Liability Insurers or Other Third Parties for Benefits Provided for Accidents, Injuries, Illnesses and Other Losses. See 42 CFR 433.139(f)(2) and (3).

Threshold Amount: The State Medicaid Agency will seek reimbursement from a liable third party for benefits provided on account of accidents, injuries, illnesses or other losses suffered by recipients when the State Medicaid Agency determines that the potential recovery, as evidenced by accumulated billings, will amount to at least \$250, or otherwise will be cost-effective.

Cost-Effectiveness: At times the State Medicaid Agency may determine that it is more cost-effective to pursue a lesser amount than the full cost of care in order to avoid litigation. Cost-effectiveness must be determined on a case-by-case basis. For example, the State Medicaid Agency may reduce the amount of its claim, which becomes the amount of reimbursement that the State Medicaid Agency can reasonably expect to recover. The State Medicaid Agency will use cost-effective criteria such as the following:

1. Factual and legal issues of liability that may exist concerning the MassHealth recipient and the liable party; and
2. Total funds, e.g. policy limits available for settlement; and
3. An estimate of the cost to the MassHealth program to pursue the claim including attorney fees and costs.

After considering the above factors, the State Medicaid Agency may pursue a lesser recovery amount to the extent that the MassHealth agency determines it to be cost-effective. Total funds available for settlement of a casualty/tort claim are the funds designated for payment of medical expenses only.