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State/Territory Name: Kentucky

State Plan Amendment (SPA) #: 13-016

This file contains the following documents in the order listed:

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Atlanta Regional Office
61 Forsyth Street, Suite 4T20
Atlanta, Georgia 30303

DIVISION OF MEDICAID & CHILDREN'S HEALTH OPERATIONS

November 18, 2013

Mr. Lawrence Kissner, Commissioner
Cabinet for Health and Family Services
Department for Medicaid Services
275 East Main Street, 6W-A
Frankfort, KY 40621

Re: Kentucky Title XIX State Plan Amendment, Transmittal #13-016

Dear Mr. Kissner:

This is to affirm approval of the above referenced State Plan Amendment which was submitted to the Regional Office on October 1, 2013. The State's requested effective date of January 1, 2013 has been accepted.

Enclosed for your records are:

1. a copy of the approval letter dated November 6, 2013 that was submitted to the State by Larry Reed, Director, Division of Pharmacy;

2. the original signed 179; and

3. the approved plan pages.

If you have any additional questions regarding this amendment, please contact Alice Hogan, State Coordinator for Kentucky, at 404-562-7432.

Sincerely,

//s//

Jackie Glaze
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Enclosure(s)

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

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

Disabled & Elderly Health Programs Group

November 6, 2013

Lawrence Kissner
Commissioner
Department of Medicaid Services
275 East Main Street, 6W-A
Frankfort, KY 40621

Dear Mr. Kissner:

We have reviewed Kentucky State Plan Amendment (SPA) 13-016, Prescribed Drugs, received in the Atlanta Regional Office on October 1, 2013. This amendment proposes to remove the four (4) prescription limit for the pharmacy benefit. The amendment also removes the Behavioral Pharmacy Management Program from the State Plan as the program no longer exists.

Based on the information provided, we are pleased to inform you that SPA 13-016 is approved with an effective date of January 1, 2014. A copy of the signed CMS-179 form, as well as the pages approved for incorporation into the Kentucky state plan will be forwarded by the Atlanta Regional Office.

If you have any questions regarding this SPA, please contact Wendy Tuttle at (410) 786-8690.

Sincerely,

//s//

Larry Reed
Director
Division of Pharmacy

cc: Jackie Glaze, ARA, DMCHO, Atlanta Regional Office
Alice Hogan, Atlanta Regional Office
Sharley Hughes, Kentucky Department of Medicaid Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER: 13-016

2. STATE: Kentucky

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
January 1, 2014

5. TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN X AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION:
42 CFR 440.80

7. FEDERAL BUDGET IMPACT:
a. FFY 2014 $Budget Neutral
b. FFY 2015 $Budget Neutral

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Att. 3.1-A, Page 7.5.2
Att. 3.1-B, Page 31.1
Att. 3.1-B, Page 31.1(a)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:
Same

10. SUBJECT OF AMENDMENT:
The purpose of this State Plan Amendment is to remove the four (4) script limit for pharmacy benefits

11. 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
X OTHER, AS SPECIFIED: Review delegated to Commissioner, Department for Medicaid Services

12. SIGNATURE OF STATE AGENCY OFFICIAL:
//s//

13. TYPED NAME: Lawrence Kissner

14. TITLE: Commissioner, Department for Medicaid Services

15. DATE SUBMITTED:10/01/13

16. RETURN TO:

Department for Medicaid Services
275 East Main Street 6W-A
Frankfort, Kentucky 40621

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:
10/01/13

18. DATE APPROVED: 11/06/13

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:
01/01/14

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:
Jackie Glaze

22. TITLE: Associate Regional Administrator
Division of Medicaid & Children Health Opns

23. REMARKS:
Approved with the following changes to items 6 as authorized by State Agency on emails dated 10/25/13:

Block # 6 changed to read: 42 CFR 440-230.

(c) A drug for which the drug manufacturer has not entered into or has not complied with a rebate agreement in accordance with 42 USC 1396r-8(a) unless there has been a review and determination by the department that it shall be in the best interest of Medicaid recipients for the department to make payment for the non-rebated drug. Note: Because federal financial participation is not generally available for a non-rebated drug, state funds will be used to cover such drugs if necessary to protect the health of a Medicaid recipient and no other appropriate options exist;

(d) A drug provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program;

(e) A drug used to treat sexual or erectile dysfunction, unless the drug is FDA approved to treat a condition other than sexual or erectile dysfunction. (This provision is effective 01-01-06); and

(f) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service. However, a legend drug may be provided through prior authorization to a recipient admitted to an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(4) Except for emergencies, a recipient "locked-in" to one pharmacy due to over-utilization may receive prescriptions:

(a) Only from his/her designated lock-in pharmacy and prescribed by his/her lock-in provider; or

(b) For specified controlled substances prescribed by his/her designated controlled substance lock-in prescriber.

(5) If authorized by the prescriber, a prescription for a controlled substance in Schedule III-V may be refilled up to five times within a six month period from the date the prescription was written or ordered; a noncontrolled substance may be refilled up to 11 times within a 12 month period from the date the prescription was written or ordered. In addition, a prescription fill for a maintenance drug shall be dispensed in a 92-day supply if a recipient has demonstrated stability on the maintenance drug. However, a 92-day supply of a maintenance drug shall not be dispensed if a prescribing provider specifies that the quantity should be less. Also, individuals receiving supports for community living services shall not be subject to the 92-day supply requirement.

(6) A refill of a prescription shall not be covered unless at least 90 percent of the prescription time period has elapsed. However, a refill may be covered before 90 percent of the prescription time period has elapsed if the prescribing provider or dispensing pharmacy submits a prior authorization request by phone or fax. Medicaid recipients residing in a long-term care facility or personal care home will be exempt from the 90 percent requirement and remain at the current 80 percent.

(7) Supplemental Rebate Program:
The state is in compliance with Section 1927 of the Social Security Act. The state has the following policies for the Supplemental Rebate Program for the Medicaid population:

(a) CMS has authorized the Commonwealth of Kentucky to enter into the Michigan multi-state pooling agreement (MMSPA) also referred to as the National Medicaid Pooling Initiative (NMPI) for drugs provided to Medicaid beneficiaries. The NMPI Supplemental Rebate Agreement (SRA) and the Amendment to the SRA submitted to CMS on January 6, 2005 have been authorized for pharmaceutical manufacturers' existing agreements through their current expiration dates. The updated NMPI SRA submitted to CMS on March 11, 2008 has been authorized for renewal and new agreements with pharmaceutical manufacturers for drugs provided to Medicaid beneficiaries.

(c) A drug for which the drug manufacturer has not entered into or has not complied with a rebate agreement in accordance with 42 USC 1396r-8(a) unless there has been a review and determination by the department that it shall be in the best interest of Medicaid recipients for the department to make payment for the non-rebated drug. Note: Because federal financial participation is not generally available for a non-rebated drug, state funds will be used to cover such drugs if necessary to protect the health of a Medicaid recipient and no other appropriate options exist;

(d) A drug provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program;

(e) A drug used to treat sexual or erectile dysfunction, unless the drug is FDA approved to treat a condition other than sexual or erectile dysfunction. (This provision is effective 01-01-06); and

(f) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service. However, a legend drug may be provided through prior authorization to a recipient admitted to an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(4) Except for emergencies, a recipient "locked-in" to one pharmacy due to over-utilization may receive prescriptions:

a. Only from his/her designated lock-in pharmacy and prescribed by his/her lock-in provider; or

b. For specified controlled substances prescribed by his/her designated controlled substance lock-in prescriber.

(5) If authorized by the prescriber, a prescription for a controlled substance in Schedule III-V may be refilled up to five times within a six month period from the date the prescription was written or ordered; a noncontrolled substance may be refilled up to 11 times within a 12 month period from the date the prescription was written or ordered. In addition, a prescription fill for a maintenance drug shall be dispensed in a 92-day supply if a recipient has demonstrated stability on the maintenance drug. However, a 92-day supply of a maintenance drug shall not be dispensed if a prescribing provider specifies that the quantity should be less. Also, individuals receiving supports for community living services shall not be subject to the 92-day supply requirement.

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(7) Supplemental Rebate Program:

The state is in compliance with Section 1927 of the Social Security Act. The state has the following policies for the Supplemental Rebate Program for the Medicaid population:

(a) CMS has authorized the Commonwealth of Kentucky to enter into the Michigan multi—state pooling agreement (MMSPA) also referred to as the National Medicaid Pooling Initiative (NMPI) for drugs provided to Medicaid beneficiaries. The NMPI Supplemental Rebate Agreement (SRA) and the Amendment to the SRA submitted to CMS on January 6, 2005 have been authorized for pharmaceutical manufacturers' existing agreements through their current expiration dates. The updated NMPI SRA submitted to CMS on March 11, 2008 has been authorized for renewal and new agreements with pharmaceutical manufacturers for drugs provided to Medicaid beneficiaries.

(b) CMS has authorized Kentucky's collection of supplemental rebates through the MMSPA.

(c) Supplemental rebates received by the State in excess of those required under the national drug rebate agreement will be shared with the Federal Government on the same percentage basis as applied under the national drug rebate agreement.

(d) All drugs covered by the program, irrespective of a supplemental rebate agreement, will comply with the provision of the national drug rebate agreement.

(e) Any contracts not authorized by CMS will be submitted for CMS approval in the future.

(f) As specified in Section 1927(b)(3)(D) of the Act, not withstanding any other provisions of law, rebate information disclosed by a manufacturer shall not be disclosed by the state for purposes other than rebate invoicing and verification.

(8) Tobacco Cessation

(a) Prescription drugs

The state will provide coverage for tobacco cessation drugs that require a prescription if prescribed by a Medicaid enrolled provider authorized to prescribe drugs. Coverage will be limited to two (2) three (3) month supplies of tobacco cessation prescription drugs in a calendar year. Prior authorization is required.

(b) Over-the-counter drugs

The state will provide coverage for over-the-counter tobacco cessation products if prescribed by a Medicaid enrolled provider authorized to prescribe drugs. Coverage will be limited to two (2) three (3) month supplies of over-the-counter tobacco cessation drugs in a calendar year. Prior authorization is required.