

## **Table of Contents**

**State/Territory Name: Kentucky**

**State Plan Amendment (SPA) #: 17-0004**

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  
Atlanta Regional Office  
61 Forsyth Street, Suite 4T20  
Atlanta, Georgia 30303



**DIVISION OF MEDICAID & CHILDREN'S HEALTH OPERATIONS**

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October 23, 2017

Stephen P. Miller, Commissioner  
Department for Medicaid Services  
275 East Main Street, 6WA  
Frankfort, KY 40621-0001

Re: Kentucky State Plan Amendment 17-0004

Dear Mr. Miller:

We have reviewed the proposed Kentucky state plan amendment, KY 17-0004, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on September 29, 2017. This amendment adds contingency fee language and updates other provisions of the existing Medicaid Recovery Audit (RAC) Contractor program.

Based on the information provided, the Medicaid State Plan Amendment KY 17-0004 was approved on October 23, 2017. The effective date of this amendment is July 1, 2017. We are enclosing the approved HCFA-179 and a copy of the new state plan pages.

If you have any additional questions, please contact Melanie Benning at (404) 562-7414 or [Melanie.Benning@cms.hhs.gov](mailto:Melanie.Benning@cms.hhs.gov).

Sincerely,

//s//

Shantrina Roberts  
Acting Associate Regional Administrator  
Division of Medicaid & Children's Health Operations

Enclosures

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>	1. TRANSMITTAL NUMBER: 17-004	2. STATE Kentucky
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
<b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE July 1, 2017	

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

NEW STATE PLAN                       AMENDMENT TO BE CONSIDERED AS NEW PLAN                       AMENDMENT

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

6. FEDERAL STATUTE/REGULATION CITATION:	7. FEDERAL BUDGET IMPACT: a. FFY 2017 – b. FFY 2018 –
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  Page 36a – Page 36e	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT ( <i>If Applicable</i> ):  Same

10. SUBJECT OF AMENDMENT:  
The purpose of this SPA is to revise Recovery Audit Contractor Program..

11. GOVERNOR'S REVIEW (*Check One*):

GOVERNOR'S OFFICE REPORTED NO COMMENT                       OTHER, AS SPECIFIED: Review delegated  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED                      to Commissioner, Department for Medicaid  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL                      Services

12. SIGNATURE OF STATE AGENCY OFFICIAL: //s//	16. RETURN TO:  Department for Medicaid Services 275 East Main Street 6W-A Frankfort, Kentucky 40621
13. TYPED NAME: Stephen P. Miller	
14. TITLE: Commissioner, Department for Medicaid Services	
15. DATE SUBMITTED: 8/23//17	

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED: 09/29/17	18. DATE APPROVED: 10/23/17
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PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: 07/01/17	20. SIGNATURE OF REGIONAL OFFICIAL: //s//
21. TYPED NAME: Shantrina Roberts	22. TITLE: Acting Associate Regional Administrator Division of Medicaid & Children's Health Operations

23. REMARKS: Approved with following changes to block # 7a and 7b.

7a changed to read: FFY 2017 (612,500) and 7b changed to read FFY 2018 (\$2,450,000)

## SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5.1 Medicaid Recovery Audit Contractor Program

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|---|---|
| Citation<br><br>Section 1902(a)(42)(B)(i)<br>Of the Social Security Act | <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.<br><br><input type="checkbox"/> The State is seeking an exception to establishing such program for the following reasons:   |
| <br>Section 1902(a)(42)(B)(ii)(I) of the Act                            | <input checked="" type="checkbox"/> The State/Medicaid Agency has contract of the types(s) listed in Section 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute.<br><br>Place a check mark to provide assurance of the following:<br><br><input checked="" type="checkbox"/> The State will make payments to the RAC(S) only from amounts recovered.<br><br><input checked="" type="checkbox"/> The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.   |
| <br>Section 1902(a)(42)(B)(ii)(II)(aa) of the Act                       | <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> <input checked="" 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.<br><br>The RAC is paid a 12.5% contingency fee for recovered overpayments<br><br><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. |

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

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|  | <input 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.   |
| Section 1902 (a)(42)(B)(ii)(II)bb) of the Act  | <input checked="" type="checkbox"/> | <p>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):</p> <p>The RAC is paid a 5% contingency fee for identified underpayments approved by the state and returned to the provider</p> |
| Section 1902 (a)(42)(B)(ii)(III) of the Act    | <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).  |
| Section 1902 (a)(42)(B)(ii)(IV)(aa) of the Act | <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.   |
| Section 1902 (a)(42)(B)(ii)(IV)(bb) of the Act | <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.  |
| Section 1902 (a)(42)(B)(ii)(IV)(cc) of the Act | <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   |

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

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4.5.1 Medicaid Recovery Audit Contractor Program (EXCEPTIONS)

Citation	Exception
42 CFR 455.508(f)	<p data-bbox="695 432 1276 464"><b>1. Exception from 3 year look back period</b></p> <p data-bbox="776 499 1495 695">The Commonwealth of Kentucky (hereinafter referred to as the Commonwealth) is requesting an exception to the 3 year look back period defined in §455.508 Eligibility requirements for Medicaid RACs (f) that states, “The entity must not review claims that are older than 3 years from the date of the claim, unless it receives approval from the State.”</p> <p data-bbox="776 737 1495 831">Kentucky seeks approval for a 5 year look back period for its retrospective reviews in order to be consistent with Kentucky policy prior to CMS RAC regulations.</p> <p data-bbox="776 873 1495 999">Kentucky Administrative code requires all Medicaid participating providers to maintain documentation for a minimum of five years from "a. the date of final payment for services"</p> <ul data-bbox="776 1041 1495 1608" style="list-style-type: none"><li data-bbox="776 1041 1495 1230">• This requirement not only holds Medicaid providers responsible for the accuracy of paid claims, but also allows the Commonwealth to recover any overpayments identified due to noncompliance with the Commonwealth rules and regulations for a five year period.</li><li data-bbox="776 1272 1495 1367">• A five year look back period is consistent with the record requirement period by other licensing and regulatory agencies.</li><li data-bbox="776 1409 1495 1608">• A five year look back maximizes the identified overpayments and lessened the interval period by which a particular provider can be cost effectively audited. The five year look back period will result in audit cost saving and be less burdensome to the providers.</li></ul>

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