

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
1301 Young Street, Room 833  
Dallas, Texas 75202



**Division of Medicaid & Children's Health, Region VI**

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January 14, 2011

Our Reference: SPA TX 10-49

Mr. Billy Millwee  
Associate Commissioner for Medicaid & CHIP  
Health and Human Services Commission  
Post Office Box 13247  
Mail Code: H100  
Austin, Texas 78711

Dear Mr. Millwee:

We have reviewed the State's proposed amendment to the Texas State Plan submitted under Transmittal Number 10-49, dated July 12, 2010. This amendment establishes services provided by birthing centers as a Medicaid state plan services and modifies reimbursement methodology to allow birthing centers and providers furnishing services in birthing centers to receive payment as mandated under the Patient Protection and Affordable Care Act beginning September 1, 2010.

Additionally, please note that when the State submits a State Plan Amendment (SPA) that may impact Indians or Indian health providers, CMS will look for evidence of the State's Tribal consultation process for that SPA. Pursuant to the new section 1902(a)(73) of the Act added by section 5006(e) of the American Recovery and Reinvestment Act (ARRA) of 2009, the State must submit evidence to CMS regarding the solicitation of advice prior to submission of the State Plan Amendment. Such consultation must include all federally-recognized tribes, Indian Health Service and Urban Indian Organizations within the State.

Based on the information submitted, we have approved the amendment for incorporation into the official Texas State Plan with an effective date change of September 1, 2010. A copy of the CMS-179 and the approved plan pages are enclosed with this letter.

If you have any questions, please contact Scott Harper at (214) 767-6564.

Sincerely,

/s/

Bill Brooks  
Associate Regional Administrator

Enclosures

cc: Emily Zalkovsky, Policy Development Support

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES</b>		1. TRANSMITTAL NUMBER:  <b>10-049</b>	2. STATE:  <b>TEXAS</b>
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE AND MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE:  <b>September 1, 2010</b>	
5. TYPE OF PLAN MATERIAL (Circle 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: <b>Patient Protection and Affordable Care Act §2301 Social Security Act §1905(a)(28)</b>		7. FEDERAL BUDGET IMPACT: SEE ATTACHMENT a. FFY 2010      \$0 b. FFY 2011      \$0 c. FFY 2012      \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  <b>SEE ATTACHMENT TO BLOCKS 8 AND 9</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):  <b>SEE ATTACHMENT TO BLOCKS 8 AND 9</b>	
10. SUBJECT OF AMENDMENT:  <b>The proposed amendment establishes services provided by birthing centers as a Medicaid state plan service and modifies the reimbursement methodology to allow birthing centers to receive payment as mandated under the Patient Protection and Affordable Care Act.</b>			
11. GOVERNOR'S REVIEW (Check One):			
<input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED: Sent to Governor's Office this date. Comments, if any, will be forwarded upon receipt. <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:		16. RETURN TO:	
13. TYPED NAME: <b>Billy R. Millwee</b>		<b>Billy R. Millwee State Medicaid Director Post Office Box 13247, MC: H-100 Austin, Texas 78711</b>	
14. TITLE: <b>State Medicaid Director</b>			
15. DATE SUBMITTED: <b>July 12, 2010</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED:      12 July, 2010		18. DATE APPROVED:      14 January, 2011	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: 1 September, 2010		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: Bill Brooks		22. TITLE: Associate Regional Administrator Div of Medicaid & Children's Health	
23. REMARKS:			

**25. Birthing Center Facility Services.**

Subject to the specifications, conditions, requirements and limitations established by the single state agency or its designee, birthing center facility services, under this State Plan, are limited to birthing centers licensed by the State of Texas pursuant to the Texas Birthing Center Licensing Act (Texas Health & Safety Code Chapter 244) or other legally authorized licensing authority under applicable state laws, to provide a level of service commensurate with the professional skills of a physician (M.D. or D.O.) or a certified nurse-midwife (CNM) who acts as the birth attendant. The center, the physician, and CNM must be licensed at the time and place the services are provided. The birthing center must be enrolled and approved by the state agency or its designee for participation in the Texas Medical Assistance Program.

Coverage of birthing center facility services is limited to certain birthing services provided by the center and determined by the attending physician or CNM to be necessary for the care of the mother and live newborn child following the mother's normal, uncomplicated pregnancy. Reimbursable services are limited to facility services provided during the labor, delivery and postpartum periods. Birthing center facility services furnished prior to or after the above described period are not considered birthing center facility services and are not covered or reimbursed as such under this State Plan. Services provided by a physician or CNM are not considered to be birthing center facility services. For services other than birthing center facility services, other applicable provisions of this Title XIX State Plan and the Texas Medical Assistance Program will apply. Services furnished by a lay midwife or a birthing center utilized by a lay midwife are not covered or reimbursed by the Texas Medical Assistance Program.

SUPERSEDES: TN- 09-27

STATE <u>Texas</u>	A
DATE REC'D. <u>7-12-10</u>	
DATE APP'D. <u>1-14-10</u>	
DATE EFF. <u>9-1-10</u>	
HCFA 179 <u>10-49</u>	

TN 10-49

Approval Date 1-14-10

Effective Date 9-1-10

Supersedes TN 09-27

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**17. Birthing Center Facility Services.**

Medicaid providers of birthing center services are reimbursed based on a fee schedule as follows:

- (a) Payment for birthing center services provided by a participating, licensed birthing center is limited to the lesser of the charges billed or the allowable rates per the fee schedule established by HHSC.
- (b) The fee schedule established by HHSC is based upon: (1) survey of birthing centers' costs to provide the services; (2) review of Medicaid fees paid by other states; (3) Medicaid fees for similar services; (4) Medicare fees; and/or (5) some combination or percentage thereof.
- (c) The birthing center and the birth attendant must bill separately for the services provided by each. The birthing center may bill only for facility services as outlined elsewhere in this state plan.
- (d) The agency's fee schedule was revised with new fees for providers of birthing center services effective for services on or after September 1, 2010. The fee schedule was posted on October 9, 2010.
- (e) All fee schedules are available through the agency's website as outlined on Attachment 4.19-B, Page 1.

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