

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL**  
FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER: 17 - 0013	2. STATE: Michigan
3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID) TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
4. PROPOSED EFFECTIVE DATE October 1, 2017	

TO: REGIONAL ADMINISTRATOR  
HEALTH FINANCING ADMINISTRATION  
DEPARTMENT OF HUMAN SERVICES

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:  
Section 1902 (a)(42)(B)(i) of the Social Security Act

7. FEDERAL BUDGET IMPACT:  
a. FFY 2018 \$0  
b. FFY 2019 \$0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  
General Program Administration, Page 36a of Section 4.5(a)(1)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):  
General Program Administration, Page 36a of Section 4.5(a)(1)

10. SUBJECT OF AMENDMENT:  
This SPA requests that the State be granted an exception to the Recovery Audit Contractor (RAC) requirements in order to expand utilization review work under its Joint Operating Agreement with the CMS Unified Program Integrity Contractor. If the State is granted this exception, its intent is to expand utilization of this agreement to include RAC audits.

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT       OTHER, AS SPECIFIED:  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED      Kathleen Stiffler, Acting Director  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL      Medical Services Administration

12. SIGNATURE OF STATE AGENCY OFFICIAL:  


16. RETURN TO:  
Medical Services Administration  
Actuarial Division - Federal Liaison  
Capitol Commons Center - 7<sup>th</sup> Floor  
400 South Pine  
Lansing, Michigan 48933  
  
Attn: Erin Black

13. TYPED NAME:  
Kathleen Stiffler

14. TITLE:  
Acting Director, Medical Services Administration

15. DATE SUBMITTED:  
December 20, 2017

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:

18. DATE APPROVED:

**PLAN APPROVED – ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL:

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPE NAME:

22. TITLE:

23. REMARKS:



STATE OF MICHIGAN

RICK SNYDER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

NICK LYON  
DIRECTOR

December 20, 2017

Ms. Ruth Hughes  
Associate Regional Administrator  
Division of Medicaid and Children's Health Operations  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
233 North Michigan Avenue, Suite 600  
Chicago, Illinois 60601

Dear Ms. Hughes:

Please find enclosed a State Plan Amendment for review and approval. The purpose of the amendment is to request an exemption to the requirement to enter into a contract with a recovery audit contractor (RAC) pursuant to Section 1902(a)(42)(B)(i) of the Social Security Act. Section 1902(a)(42)(B)(i) of the Social Security Act requires that the State establish a program under which it will contract with one or more RAC for the purpose of identifying underpayments and overpayments of Medicaid claims under the State Plan and under any waiver of the State Plan.

The State requests that it be granted an exception to perform utilization reviews using alternative resources. If granted this waiver, the State of Michigan intends to expand utilization of the Joint Operating Agreement with the CMS Unified Program Integrity Contractor (UPIC) to include audits of the providers that Michigan RAC previously conducted.

We are requesting an exception to this requirement for the reasons detailed below.

On January 6, 2017, the State of Michigan posted a request for proposal (RFP) for a new RAC. During the question and answer period, questions were submitted and one bidder submitted a proposal. However, the submitted proposal failed to meet the minimum qualifications of the RFP. The RFP was closed on February 2, 2017.

The RFP was revised, and on March 17, 2017, the State of Michigan posted a second RFP for a new RAC. During the question and answer period, there were no questions submitted by any vendor and by the close of the response time, the State had received no proposals. This RFP was closed on April 19, 2017.

The State attempted to approach previous bidders from the 2012 RFP and the contractor that was awarded the Michigan RAC contract in 2012. The RAC contractor indicated that they were not interested in continuing this contract or submitting a proposal for the new RAC bid. Additionally, all of the previous bidders from the 2012 RFP contract bid that could be reached stated they were either out of the RAC business or not interested in submitting a proposal.

Ms. Ruth Hughes  
December 14, 2017

Page 2

We thank CMS and all involved staff for their assistance. We appreciate your help and look forward to the approval of this SPA. If you have any questions or need additional information, please contact Erin Black, of my staff, at (517) 335-5303 or via e-mail at [BlackE@michigan.gov](mailto:BlackE@michigan.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Stiffler". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Kathy Stiffler, Acting Director  
Medical Services Administration

cc: Keri Toback  
Mary Ann Farris  
Mara Siler-Price  
Carolyn Brown  
Erin Black  
Pamela Callum-Bragg

Citation

4.5(a)(1) Medicaid Recovery Audit Contractor Program

Section 1902(a)(42)(B)(i) of the Social Security Act

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.

The State is seeking an exception to establishing such program for the following reasons:  
~~CMS' September 16, 2011, publication of the Medicaid RAC final rule does not provide sufficient time for the state to complete its procurement process and implement the program by January 1, 2012. The state proposes an implementation date of March 31, 2012.~~

~~The state is seeking an exception to 42 CFR 455.508(b), requiring the RAC to have one FTE contractor medical director licensed to practice in Michigan because this requirement would create an undue burden on the State, increase the cost of the RAC program and reduce service quality.~~

WHEN THE EXISTING RECOVERY AUDIT CONTRACTOR (RAC) INDICATED IT WAS NOT INTERESTED IN CONTINUING, THE STATE OF MICHIGAN WAS UNABLE TO SECURE A RAC WHO MEETS THE MINIMUM STANDARDS DESPITE POSTING A REQUEST FOR PROPOSAL (RFP) MULTIPLE TIMES IN 2017.

THE STATE OF MICHIGAN HAS ENTERED INTO A JOINT OPERATING AGREEMENT (JOA) WITH THE CMS UNIFIED PROGRAM INTEGRITY CONTRACTOR TO CONDUCT AUDITS ON MICHIGAN MEDICAID PROVIDERS. THE STATE REQUESTS THAT IT BE GRANTED AN EXCEPTION TO THE RAC REQUIREMENTS TO ALLOW THE STATE TO EXPAND UTILIZATION OF THIS JOA TO INCLUDE RAC AUDITS.

Section 1902(a)(42)(B)(ii)(I) of the Act

The State/Medicaid agency has contracts of the type(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.

Place a check mark to provide assurance of the following:

The State will make payments to the RAC(s) only from amounts recovered.

The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.

Section 1902(a)(42)(B)(ii)(II)(aa) of the Act

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):

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.

- 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.
- 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.



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

RICK SNYDER  
GOVERNOR

NICK LYON  
DIRECTOR

December 7, 2017

NAME  
TITLE  
ADDRESS  
CITY STATE ZIP

Dear Tribal Chair and Health Director:

**RE:** Notice of Intent to Submit a State Plan Amendment Requesting Waiver of the Recovery Audit Contractor (RAC) Requirement

This letter, in compliance with Section 1902(a)(73) and Section 2107(e)(1)(C) of the Social Security Act, serves as notice of intent to all Tribal Chairs and Health Directors of the request by the Michigan Department of Health and Human Services (MDHHS) to submit a State Plan Amendment.

The purpose of the State Plan Amendment is to waive the requirements for the RAC under Section 1902 (a)(42)(B)(i) of the Social Security Act and be granted an exception to perform utilization reviews using alternative resources. The State of Michigan intends to utilize its agreement with the Centers for Medicare & Medicaid Services (CMS) Unified Program Integrity Contractor (UPIC) to conduct audits of the providers that the Michigan RAC previously conducted. This change is expected to have little or no impact on Tribal Members. The anticipated effective date of this State Plan Amendment is October 1, 2017.

There is no public hearing scheduled for this State Plan Amendment. Due to timing of process feedback received, it is not possible to adhere to the sixty (60) days notification. Therefore, notification is being provided as soon as possible. Input regarding this Amendment is highly encouraged, and comments regarding this Notice of Intent may be submitted to Lorna Elliott-Egan, MDHHS Liaison to the Michigan Tribes. Lorna can be reached at 517-284-4034, or via email at [Elliott-EganL@michigan.gov](mailto:Elliott-EganL@michigan.gov). **Please provide all input by January 22, 2018.**

In addition, MDHHS is offering to set up group or individual meetings for the purpose of consultation in order to discuss this Amendment, according to the tribes' preference. This consultation meeting will allow tribes the opportunity to address any concerns and voice any suggestions, revisions, or objections to be relayed to the author of the proposal. If

you would like additional information or wish to schedule a consultation meeting, please contact Lorna Elliott-Egan at the telephone number or email address provided above.

MDHHS appreciates the continued opportunity to work collaboratively with you to care for the residents of our state.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Stiffler". The signature is written in a cursive, flowing style.

Kathy Stiffler, Acting Director  
Medical Services Administration

cc: Keri Toback, Region V, CMS  
Leslie Campbell, Region V, CMS  
Ashley Tuomi, MHPA, Executive Director, American Indian Health and Family  
Services of Southeastern Michigan  
L. John Lufkins, Executive Director, Inter-Tribal Council of Michigan, Inc.  
Keith Longie, Director, Indian Health Service - Bemidji Area Office  
Lorna Elliott-Egan, MDHHS

**Distribution List for L 17-54  
December 7, 2017**

Mr. Bryan Newland, Tribal Chairman, Bay Mills Indian Community  
Ms. Audrey Breakie, Health Director, Bay Mills (Ellen Marshall Memorial Center)  
Mr. Thurlow Samuel McClellan, Chairman, Grand Traverse Band Ottawa & Chippewa Indians  
Ms. Ruth Bussey, Health Director, Grand Traverse Band Ottawa/Chippewa  
Mr. Kenneth Meshigaud, Tribal Chairman, Hannahville Indian Community  
Ms. G. Susie Meshigaud, Health Director, Hannahville Health Center  
Mr. Warren C. Swartz, Jr., President, Keweenaw Bay Indian Community  
Ms. Kathy Mayo, Interim Health Administrator, Keweenaw Bay Indian Community - Donald Lapointe Health/Educ Facility  
Mr. James Williams, Jr., Tribal Chairman, Lac Vieux Desert Band of Lake Superior Chippewa Indians  
Ms. Sadie Valliere, Health & Human Services Director, Lac Vieux Desert Band  
Mr. Larry Romanelli, Ogema, Little River Band of Ottawa Indians  
Mr. Donald MacDonald, Health Director, Little River Band of Ottawa Indians  
Ms. Regina Gasco-Bentley, Tribal Chairman, Little Traverse Bay Band of Odawa Indians  
Ms. Jodi Werner, Health Director, Little Traverse Bay Band of Odawa  
Mr. Scott Sprague, Chairman, Match-E-Be-Nash-She-Wish Potawatomi Indians (Gun Lake Band)  
Ms. Kelly Wesaw, Health Director, Match-E-Be-Nash-She-Wish Potawatomi  
Mr. Jamie Struck, Tribal Chairman, Nottawaseppi Huron Band of Potawatomi Indians  
Ms. Rosalind Johnston, Health Director, Huron Potawatomi Inc.- Tribal Health Department  
Mr. John Warren, Tribal Chairman, Pokagon Band of Potawatomi Indians  
Mr. Matt Clay, Health Director, Pokagon Potawatomi Health Services  
Mr. Frank Cloutier, Tribal Chief, Saginaw Chippewa Indian Tribe  
Mrs. Karmen Fox, Executive Health Director, Nimkee Memorial Wellness Center  
Mr. Aaron Payment, Tribal Chairman, Sault Ste. Marie Tribe of Chippewa Indians  
Mr. Joel Lumzden, Health Director, Sault Ste. Marie Tribe of Chippewa Indians - Health Center

CC: Keri Toback, Region V, CMS  
Leslie Campbell, Region V, CMS  
Ashley Tuomi, MHPA, Executive Director, American Indian Health and Family Services of Southeastern Michigan  
L. John Lufkins, Executive Director, Inter-Tribal Council of Michigan, Inc.  
Keith Longie, Director, Indian Health Service - Bemidji Area Office  
Lorna Elliott-Egan, MDHHS