DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

Region IX
Division of Medicaid & Children's Health Operations
90 Seventh Street, Suite 5-300 (5W)
San Francisco, CA 94103-6706

OCT 20 2011

Toby Douglas, Director
California Department of Health Care Services
PO Box 997413, MS 0000
Sacramento, CA 95899-7413

Dear Mr. Douglas:

Enclosed is an approved copy of California State Plan Amendment (SPA) Number 11-004. This California Medicaid State Plan Amendment (SPA) increases the threshold amounts used to determine the cost effectiveness of recoveries for casualty insurance/workers' compensation cases. This allows the State flexibility to give priority to those cases which yield the highest third party collections. The SPA is effective July 1, 2011.

Enclosed are approved SPA Attachment 4.22-B pages 1 and 2 that should be incorporated into your approved State Plan.

As a reminder, the Federal share of any provider overpayments must be returned within one year following discovery regardless of whether the State has recovered the overpayment from the provider in accordance with federal regulation at 42 CFR 433.312(a)(2).

If you have any questions, please contact Carolyn Kenline at (415) 744-3591 or at carolyn.kenline@cms.hhs.gov.

Sincerely,

Gloria Nagle

Gloria Nagle, Ph.D., M.P.A.
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Enclosure

cc: Nancy Dieter, Centers for Medicare and Medicaid Services
Margaret Hoffeditz, California Department of Health Care Services
Kathryn Waje, California Department of Health Care 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: **11-004**

2. STATE: **California**

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
July 1, 2011

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:
42 CFR 433.139(f)(2), 42 CFR 433.139(f)(3)

7. FEDERAL BUDGET IMPACT:
a. **FFY 2011** $0
b. **FFY 2012** $0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
Attachment 4.22-B, page 1 and page 2

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:
Attachment 4.22-B, page 1 and page 2

10. SUBJECT OF AMENDMENT:

Third Party Liability – Threshold Amount Increase

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
☒ OTHER, AS SPECIFIED:
The Governor's Office does not wish to review the State Plan Amendment.

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:
Toby Douglas

14. TITLE:
Director

15. DATE SUBMITTED: SEP 01 2011

16. RETURN TO:
Department of Health Care Services
Attn: State Plan Coordinator
1501 Capitol Avenue, Suite 71.3.26
P.O. Box 997417
Sacramento, CA 95899-7417

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: September 1, 2011

18. DATE APPROVED: OCT 20 2011

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: July 1, 2011

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME: Gloria Nagle

22. TITLE: Associate Regional Administrator

23. REMARKS: Pen and ink change was confirmed via October 24, 2011 email from Kathyryn Waje.

FORM HCFA-179 (07-92)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: California

Third Party Liability

(1) The State Medicaid agency will use the pay and chase method for the purpose of recovering Third Party Liability when services covered under the plan are furnished to an individual on whose behalf child support enforcement is being carried out by the State IV-D agency. Pay and chase activities are initiated in accordance with the established threshold for seeking reimbursement of medical benefits from a liable third party.

Non-emergency wheelchair van and litter/medi-van transportation (medical services codes 0015-0029) and Adult Day Health Care (ADHC) services (medical services codes Z8500-Z8506) are not benefits covered by the health insurance industry. Therefore, the Department of Health Care Services (Department) is exempting these services from cost avoidance and post-payment billings because the cost to the State to edit the claims to cost avoid such services and to create post-payment billings on a recovery basis is not justified.

(2) The threshold amounts used in determining whether to seek reimbursement from a liable third party are as follows:

a) Payments for care to eligibles with health insurance are computer billed monthly when $100 in accumulated health care services have been paid by Medi-Cal. If the $100 threshold is not reached within three (3) years, no claim is generated.

b) Potential Casualty Insurance and Workers' Compensation cases are established when Medi-Cal payments of $2,000 or more have been made. Potential Casualty Insurance and Workers' Compensation cases may be established when Medi-Cal payments of less than $2,000 have been made when the amount the State expects to recover would be greater than the cost of recovery.

c) When unsolicited money of any value is received, it is retained, researched to identify why it was received and credited to the proper account or returned to sender.

d) Estate Recovery claims are filed in the probate or distribution of assets of deceased Medi-Cal beneficiaries when the health care services paid by the State are $750 or more. Estate Recovery claims may be filed in the probate or distribution of assets of deceased Medi-Cal beneficiaries when the health care services paid by the State are less than $750 when the amount the State expects to recover would be greater than the cost of recovery.

(3) The dollar amount or timeframe, used by the State Medicaid Agency for accumulating health care services payments to determine whether to bill a particular third party, are defined in #2 above.

(4) For third-party recoveries, the Department shall comply with 42 U.S.C. Section 1396a(a)(25)(B) and use the following factors and guidelines in determining whether or to what extent to pursue recovery, after deduction of the Department's share of attorney's fees and costs, from a liable party.

a) Ascertain the amount of Medicaid expenditures related to the injury and the amount of the potential gross settlement, judgment, and/or award.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: California

b) Determine whether the full Medicaid lien, plus attorney's fees and costs, is likely to exhaust or exceed the settlement, judgment, and/or award.

c) If the Medicaid lien, plus attorney's fees and costs, exhausts or exceeds the settlement, judgment, and/or award, and if the Department:

1) Is informed that the Medicaid recipient will not pursue the claim; or has made reasonable efforts to ascertain the recipient's intention regarding the claim, but could not obtain a response; and

2) Finds it cost prohibitive to investigate and prosecute the claim to establish liability if the claim were to be tendered to the Department, then the Department shall follow the procedures stated in d).

d) The Department shall consider cost-effectiveness to the State in determining the estimated net recovery amount to be pursued, based on the likelihood of collections. In determining the estimated net recovery amount, the following factors shall be considered:

1) Settlement as may be affected by insurance coverage, policy limits, or other factors relating to the liable party;

2) The attorney's fees and litigation costs paid for by the Medicaid recipient;

3) Factual and legal issues of liability as may exist between the Medicaid recipient and third party;

4) Problems of proof faced in obtaining the settlement, judgment, and/or award;

5) The estimated attorney's fees and costs required for the Department to pursue the claim;

6) The amount of the settlement, judgment, and/or award allocated to, or expected to be allocated to, medical expenses or medical care; and

7) The extensive administrative burden that would be placed on the Department to pursue claims.

e) To ensure the highest potential recovery, the Department will first consider the above factors and then, on a case-by-case basis, determine if a recovery of a lesser amount is still cost-effective.

f) In the event the Department's lien exceeds the beneficiary's recovery after deducting, from the settlement, judgment, or award, attorney's fees and litigation costs paid for by the beneficiary, the Department will credit CMS with its full federal share regardless whether the Department's lien was settled under state law which prohibits the Department from recovering more than the beneficiary recovers.

ENCLOSURE **FOR STAKEHOLDERS ONLY

Revised Pages for:

CALIFORNIA MEDICAID STATE PLAN

Under Transmittal of

STATE PLAN AMENDMENT (SPA)

11-004*

All new pages will have this SPA* number identified as the new TN No., so it will not be repeated for each new insert pages.

Remove Page(s)	Insert Page(s)
Attachment 4.22-B, pages 1-2 (TN 08-005)	Attachment 4.22-B, pages 1-2