CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

Steven L. Beshear
Governor

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Janie Miller
Secretary

Neville Wise
Acting Commissioner

November 15, 2011

Jackie Glaze
Associate Regional Administrator
Division of Medicaid and Children's Health Operations
Centers for Medicare and Medicaid Services
61 Forsyth Street, SW, Suite 4T20
Atlanta, Georgia 30303-8909

RE: Kentucky State Plan Amendment 11-012
RAC Exceptions

Dear Ms. Glaze:

Enclosed please find Kentucky Title XIX Transmittal Number 11-012. The purpose of this State Plan Amendment is to request exceptions to the Recovery Audit Contractor Program – three year look back, Medical Director and exception of Managed Care to RAC.

If additional information is needed, please contact my office at 502-564-4321.

Sincerely,

Neville Wise
Acting Commissioner

NW/sjh

Enclosure

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: 11-012

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
01/01/12

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 455.508(f)
42 CFR 455.508(b)
42 CFR 455.506(a)(1)

7. FEDERAL BUDGET IMPACT:
a. FFY 2011 - Budget Neutral
b. FFY 2012 - Budget Neutral

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
Section 4, Page 36c
Section 4, Page 36d
Section 4, Page 36e

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:
None

10. SUBJECT OF AMENDMENT
The purpose of this State Plan Amendment is to request exceptions to the Recovery Audit Contractor Program – three year look back, Medical Director and exception of Managed Care to RAC.

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: Neville I. Wise

13. TYPED NAME: Neville Wise

14. TITLE: Acting Commissioner, Department for Medicaid Services

15. DATE SUBMITTED: November 9, 2011

16. RETURN TO:
Department for Medicaid Services
275 East Main Street 6W-A
Frankfort, Kentucky 40621

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. TYPED NAME:

22. TITLE:

23. REMARKS:

4.5.1 Medicaid Recovery Audit Contractor Program (EXCEPTIONS)

Citation	Exception
42 CFR 455.508(f)	**1. Exception from 3 year look back period** 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." 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. 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" • 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. • A five year look back period is consistent with the record requirement period by other licensing and regulatory agencies. • 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.

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5.1 Medicaid Recovery Audit Contractor Program (EXCEPTIONS) (continued)

42 CFR 455.508(b)

2. Exception from 455.508(b) requiring 1.0 FTE Medical Director

Section 455.508 (b) states, "The entity must hire a minimum of 1.0 FTE Contractor Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experience. A State may seek to be excepted, in accordance with §455.516, from requiring its RAC to hire a minimum of 1.0 FTE Contractor Medical Director by submitting to CMS a written request for CMS review and approval."

The Commonwealth is seeking an exemption for requiring the RAC contractor to provide one FTE Medical Director for RAC services:

- The one FTE Medical Director requirement has its origins with the Medicare RAC program. In Medicare Region D, which pays out over $100B in claims each year and represents approximately 26% of all Medicare FFS spend, there was a single Medical Director for all 17 states within Region D. In addition, CMS RAC Region C represents nearly 40% of all Medicare FFS spend, and is required to have only a single Medical Director. The Medicaid spend associated with the initial set of providers/claims subject to the RAC's purview is substantially smaller.

- The initial set of providers and claims that are subject to the RAC contract (1) are limited, (2) will not typically require Complex Reviews and (3) do not focus on diagnosis related issues where a FTE Medical Director would typically be required (4) can be adequately reviewed by the required certified coder/s.

- The RAC recovery fee rate is 12.5% which is the maximum rate for our region. Adding one FTE medical director would increase cost above the 12.5% limit requiring the Commonwealth to request an exemption from CMS to go above the 12.5% fee limit.

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5.1 Medicaid Recovery Audit Contractor Program (EXCEPTIONS) (continued)

2. Exception from 455.508(b) requiring 1.0 FTE Medical Director (continued)

- For limited items that may require a Medical Director, the Commonwealth can utilize the Department for Medicaid services Medical Director. Additionally, the Commonwealth may utilize the contractor's Medical Director on an as needed basis but who is not dedicated solely to the Commonwealth. This as needed approach is the most efficient and economical use of time.

42 CFR 455.506(a)(1)

3. Exception from 455.506(a)(1) Managed Care exclusion justification

Section 455.506 (a)(1) states, "States may exclude Medicaid managed care claims from review by Medicaid RACs."

- The Commonwealth of Kentucky requests to exclude Medicaid managed care claims from review by its Medicaid RAC. The Commonwealth understands that CMS may engage in future rulemaking with regard to the review of managed care claims by Medicaid RACs and until that time the Commonwealth requests the exception.