DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES

1. TRANSMITTAL NUMBER: **10-091**

2. STATE: **TEXAS**

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: **December 31, 2010**

5. TYPE OF PLAN MATERIAL *(Circle 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:
Social Security Act 1902(a)(42)(B)(i)

7. FEDERAL BUDGET IMPACT: SEE ATTACHMENT
a. FFY **2011** **$0**
b. FFY **2012** **$0**
c. FFY **2013** **$0**

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
SEE ATTACHMENT TO BLOCKS 8 & 9

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:
SEE ATTACHMENT TO BLOCKS 8 & 9

10. SUBJECT OF AMENDMENT:

The proposed amendment is being submitted to comply with the Centers for Medicare & Medicaid Services (CMS) directives to implement Section 6411 of the Affordable Care Act, *Expansion of the Recovery Audit Contractor (RAC) Program.*

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: Sent to Governor's Office this date. Comments, if any, will be forwarded upon receipt.

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:
Billy R. Millwee

14. TITLE:
State Medicaid Director

15. DATE SUBMITTED:
December 28, 2010

16. RETURN TO:
Billy R. Millwee
State Medicaid Director
Post Office Box 13247, MC: H-100
Austin, Texas 78711

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: 29 December, 2010

18. DATE APPROVED: 9 March, 2011

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: 31 December, 2010

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME: Bill Brooks

22. TITLE: Associate Regional Administrator
Division of Medicaid & Children's Health

23. REMARKS:

FORM CMS – 179 (07-92)

STATE Texas
DATE REC'D. 12-29-10
DATE APPV'D 3-9-11
DATE EFF 12-31-10
HCFA 179 10-91
A

4.5b - Medicaid Recovery Audit Contractor Program (continued)

Citation	
Section 1902 (a)(42)(B)(ii)(IV)(aa) of the Act	____ 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	____ 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	____ 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.

STATE Texas
DATE REC'D 12-29-10
DATE APPV'D 3-9-11
DATE EFF 12-31-10
HCFA 179 10-91
A

4.5b - Medicaid Recovery Audit Contractor Program (continued)

Citation	
Section 1902 (a)(42)(B)(ii)(II)(aa) of the Act	The following payment methodology shall be used to determine State payments to Medicaid RAC(s) for recovered overpayments (e.g., the percentage of the contingency fee): ____ The State attests that if the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RAC(s), as published in the Federal Register, the State will only submit for FFP up to the amount equivalent to that published rate.
Section 1902 (a)(42)(B)(ii)(II)(bb) of the Act	_____ The following payment methodology will be used to determine State payments to Medicaid RAC(s) for underpayments: The specific payment methodology will be contingent on the grant of legislative authority. _____ The State will submit a justification seeking to pay the Medicaid RAC(s) a contingency fee higher than the highest contingency fee rate paid to Medicare RAC(s) as published in the Federal Register.
Section 1902 (a)(42)(B)(ii)(III) of the Act	_____ The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).

STATE Texas
DATE REC'D 12-29-10
DATE APPV'D 3-9-11
DATE EFF 12-31-10
HCFA 179 10-91
A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of Texas

4.5 Medicaid Agency Fraud Detection and Investigation

4.5b - Medicaid Recovery Audit Contractor Program

Citation	
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. __X__ The State is seeking an exception to establishing such program for the following reasons: The Medicaid RAC program cannot be established until legislative authority has been granted. The Texas Legislature is currently in session, and a bill to establish the program has been drafted. The legislative session ends on May 30, 2011, but HHSC will not know whether authority to establish the RAC program has been given until the bill passes and the Governor signs the bill into law, which could be as late as June 19, 2011. If the bill passes and is signed into law, the effective date may not be until September 1, 2011. This state plan amendment (SPA) will be in effect until October 1, 2011. By that date, the State will submit to CMS a new SPA, which will either : 1) establish the State RAC program, or 2) seek an exception to establishing a RAC program, based on a lack of legislative authority.
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.