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**State/Territory Name: South Carolina**

**State Plan Amendment (SPA) #: 21-0015**

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Summary Form (with 179-like data)
- 3) Approved SPA Pages

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

Centers for Medicare & Medicaid Services  
601 E. 12th St., Room 355  
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

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February 16, 2022

Robert M. Kerr  
Director  
South Carolina Department of Health and Human Services  
Post Office Box 8206  
Columbia, SC 29202-8206

Re: South Carolina State Plan Amendment 21-0015

Dear Mr. Kerr:

We reviewed your proposed Medicaid State Plan Amendment, SC 21-0015, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on December 21, 2021. This amendment complies with Third Party Liability (TPL) requirements authorized under both the Bipartisan Budget Act (BBA) of 2018 and the Medicaid Services Investment and Accountability Act (MSIAA) of 2019.

CMS approved SC 21-0015 on February 16, 2022, with an effective date of December 31, 2021.

If you have any questions regarding this amendment, please contact William Pak at (404) 562-7407 or via email at [William.Pak@cms.hhs.gov](mailto:William.Pak@cms.hhs.gov).

Sincerely,

James G. Scott, Director  
Division of Program Operations  
Medicaid and CHIP Operations Group

|  |  |                        |
|--|--|------------------------|
| <b>TRANSMITTAL AND NOTICE OF APPROVAL OF<br/>STATE PLAN MATERIAL</b><br><b>FOR: CENTERS FOR MEDICARE &amp; MEDICAID SERVICES</b> | 1. TRANSMITTAL NUMBER<br><u>2 1</u> — <u>0 0 1 5</u>   | 2. STATE<br><u>S C</u> |
|  | 3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT<br><input checked="" type="radio"/> XIX <input type="radio"/> XXI          |                        |
| TO: CENTER DIRECTOR<br>CENTERS FOR MEDICAID & CHIP SERVICES<br>DEPARTMENT OF HEALTH AND HUMAN SERVICES                           | 4. PROPOSED EFFECTIVE DATE<br><p style="text-align: center; color: blue;">December 31, 2021</p>  |                        |
| 5. FEDERAL STATUTE/REGULATION CITATION<br>BBA of 2018 and MSIAA of 2019  | 6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)<br>a. FFY <u>2022</u> \$ <u>(64,000)</u><br>b. FFY <u>2023</u> \$ <u>(85,000)</u>  |                        |
| 7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT<br><br>Attachment 4.22-B, page 1, 2<br>Section 4, page 69a                      | 8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)<br><br>Attachment 4.22-B, page 1, 2<br>Section 4, page 69a |                        |

9. SUBJECT OF AMENDMENT

To bring the State Plan into compliance with the TPL requirements under the BBA of 2018 and the MSIAA of 2019

10. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT                       OTHER, AS SPECIFIED:  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

|  |  |
|--|--|
| 11. SIGNATURE OF STATE AGENCY OFFICIAL<br> | 15. RETURN TO<br>South Carolina Department of Health and Human Services<br>Post Office Box 8206<br>Columbia, SC 29202-8206 |
| 12. TYPED NAME<br>Robert M. Kerr           |  |
| 13. TITLE<br>Director                      |  |
| 14. DATE SUBMITTED<br>December 17, 2021    |  |

**FOR CMS USE ONLY**

|  |  |
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| 16. DATE RECEIVED<br>December 21, 2021 | 17. DATE APPROVED<br>February 16, 2022 |
|--|--|

**PLAN APPROVED - ONE COPY ATTACHED**

|  |   |
|--|---|
| 18. EFFECTIVE DATE OF APPROVED MATERIAL<br>December 31, 2021 | 19. SIGNATURE OF APPROVING OFFICIAL   |
| 20. TYPED NAME OF APPROVING OFFICIAL<br>James G. Scott       | 21. TITLE OF APPROVING OFFICIAL<br>Director, Division of Program Operations |

22. REMARKS

Pen and ink changes made to Box 7 and 8 with approval of the state on January 24, 2022.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: South Carolina

Requirements for Third Party Liability -  
Payment of Claims

The State uses a cost avoidance method of claims processing when third party liability is established at the time a claim is filed. The South Carolina Department of Health and Human Services (SCDHHS) does not utilize a threshold value in the cost avoidance process. SCDHHS will comply with the requirement for states to apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services (42 CFR 433.139(b)(1)).

- Exceptions to the cost avoidance method are waived claims, Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services, and pediatric preventive care. SCDHHS will comply with the requirement for states to make payments without regard to potential TPL for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days (42 CFR 433.139(b)(3)(i)).

1. Claims for child support enforcement beneficiaries are suspended for up to 100 days. In order to avoid delay, the provider should bill the primary payer and declare the payment or denial on the secondary claim to Medicaid. If the TPL information is received during the 100 day delay period, the claim will process. If no payment or denial has been received for such claims after 100 days, the claim is paid as primary and billed to the known third party.

2. In general, recovery of reimbursement is sought directly from the liable health insurance companies for all identified claims without regard to a threshold amount or any other guideline. The sole exception is for institutional provider claims paid prior to the onset of cost avoidance where other health insurance resources are known to exist. Because recovery of reimbursement for these claims is sought directly from the providers rather than from the liable health insurance companies it is not cost effective to pursue claims with small dollar amounts. For these claims only, a threshold amount of \$20 per claim is utilized in the pay and chase process.

For discovery of Casualty Recovery cases, a minimum threshold of one paid claim of at least \$250 will be established. For cases discovered through other means, SCDHHS will accumulate paid claims until the threshold of \$250 has been reached, at which point a Casualty Recovery claim will be established. For all claims established, SCDHHS shall assert for full reimbursement of the Medicaid Claim from known liable parties. Upon discovery and establishment of a claim, and at all times during the pursuit of recovery of the claim, SCDHHS shall determine what portion of the gross settlement to claim based on cost effectiveness. For cases where the potential settlement proceeds available are less than twice the amount of Medicaid Paid Claims, SCDHHS will determine what portion of the total recovery to pursue based upon cost effectiveness principles.

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TN No. SC 21-0015

Supersedes

Approval Date 02/16/22

Effective Date 12/31/21

TN No. MA 98-012

HCFA ID: 1076P/0019P

SCDHHS' review of cost effectiveness shall include, but not be limited to, documentation as to the Factual and Legal issues of certainty of liability; SCDHHS' previous professional experience with the recipient's Counsel and related Jurisdiction; the involvement of multiple third parties, COB, and other payment sources (i.e., PIP, Worker's Comp, Underinsured Motorist, Uninsured Motorist), the estimated attorney's fees, and any other cost of recovery.

SCDHHS will at all times pursue that amount which will maximize total net recoveries to the program. When deemed appropriate, SCDHHS will attempt to resolve the case through binding arbitration, arbitration or mediation. SCDHHS will not agree to a lesser recovery amount than that determined by an analysis of cost-effectiveness.

In all instances, SCDHHS, through the assignment of rights to third party benefits as a condition of eligibility, reserves the right to pursue known liable third parties on behalf of the Recipient. In instances where it has been determined that the Recipient has engaged sufficient competent representation, and is in pursuit of known liable third parties, SCDHHS may rely upon their services and seek reimbursement of Medicaid Paid Claims from the obtain settlement proceeds.

SCDHHS shall apply available resources in a manner that ensures maximum average return over the entire caseload and will apply the cost effectiveness principle established in 1902(a)(25)(B) in determining the amount of recovery to pursue based on the likelihood of collections.

3. All claims which are not cost-avoided, including waived claims, EPSDT services, pediatric preventive care, and any other claims for which SCDHHS does not make a determination related to cost-effectiveness and access to care, are accumulated and billed directly to the liable health insurance companies on a monthly basis without regard to a dollar amount.

Revision: HCFA-PM-90-2 (BPD)  
JANUARY 1990

OMB No.: 0938-0193

State/Territory: South Carolina

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| <p><u>Citation</u>            <input checked="" type="checkbox"/>    (c)    Providers are required to bill liable third parties 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.</p> <p>433.139(b) (3)<br/>(ii) (A)<br/>55 FR 1423</p> |   |
|  | (d) <u>ATTACHMENT 4.22-B</u> specifies the following:   |
| <p>433.139(b) (3) (ii) (C)<br/>55 FR 1423</p>  | (1)    The method used in determining a provider's compliance with the third party billing requirements at §433.139(b) (3) (ii) (C).  |
| <p>433.139(f) (2)<br/>50 FR 46652</p>  | (2)    The threshold amount or other guideline used in determining whether to seek recovery of reimbursement from a liable third party, or the process by which the agency determines that seeking recovery of reimbursement would not be cost effective. |
| <p>433.139(f) (3)<br/>50 FR 46652</p>  | (3)    The dollar amount or time period the State uses to accumulate billings from a particular liable third party in making the decision to seek recovery of reimbursement.  |
| <p>433.139(b) (1)</p>  | (4)    The requirement for states to apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services.  |
| <p>433.139(b) (3) (i)</p>  | (5)    The requirement for states to make payments without regard to potential TPL for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days. |
| <p>433.139(b) (3) (ii) (B)</p>   | (6)    State flexibility to make payments without regard to potential TPL for up to 100 days for claims related to child support enforcement beneficiaries.   |
| <p>42 CFR 447.20<br/>55 FR 1423</p>  | (e)    The Medicaid agency ensures that the provider furnishing a service for which a third party is liable follows the restrictions specified in 42 CFR 447.20.  |

TN No. SC 21-0015  
Supersedes  
TN No. MA 90-19

Approval Date 02/16/22

Effective Date 12/31/21  
HCFA ID: 1010P/0012P