Table of Contents

State/Territory Name: Texas

State Plan Amendment (SPA)#: 23-0040

This file contains the following documents in the order listed below:

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

Center for Medicaid and CHIP Services
Medical Benefits and Health Programs Group

March 7, 2024

Emily Zalkovsky
State Medicaid Director
Post Office Box 13247, MC: H-100
Austin, Texas 78711

Dear Director Zalkovsky:

We have reviewed Texas State Plan Amendment (SPA) 23-0040 received in the Centers for Medicare and Medicaid Services (CMS) OneMAC application on December 15, 2023. This SPA updates language in the State Plan Pages regarding the composition of the Drug Utilization Review Board.

Based on the information provided and consistent with the regulations at 42 CFR 430.20, we are pleased to inform you that TX-23-0040 is approved with an effective date of March 1, 2024.

We are attaching a copy of the signed CMS-179 form, as well as the pages approved for incorporation into the Texas State Plan. If you have any questions regarding this amendment, please contact Whitney Swears at Whitney.Swears@cms.hhs.gov.

Sincerely,

[redacted]

Cynthia R. Denemark
Director
Division of Pharmacy

cc: Priscilla Parrilla, Texas Pharmacy Director
Ford Blunt, CMS, Medicaid and CHIP Operations Group
Whitney Swears, CMS, Medical Benefits and Health Programs Group

DEPARTMENT OF HEALTH ANDHUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 23-0040

2. STATE: TX

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
March 1, 2024

5. FEDERAL STATUTE/REGULATION CITATION
Government Code Section 531.0736(c) and (d)
Social Security Act Section 1927(g)(3)
42 CFR Section 456.716

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 2024 $ 1,667
b. FFY 2025 $ 1,667

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Appendix 1 to Attachment 3.1-A
Page 24b
Appendix 1 to Attachment 3.1-A
Page 24c
Appendix 1 to Attachment 3.1-B
Page 24b
Appendix 1 to Attachment 3.1-B
Page 24c
Basic State Plan 4.26
Page 74(b)

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*

Appendix 1 to Attachment 3.1-A
Page 24B (TN 04-0016)
Appendix 1 to Attachment 3.1-A
Page 24B (TN 04-0016)
Appendix 1 to Attachment 3.1-B
Page 24B (TN 04-0016)
Appendix 1 to Attachment 3.1-B
Page 24B (TN 04-0016)
Basic State Plan 4.26
Page 74(b) (TN 93-13)

9. SUBJECT OF AMENDMENT

The proposed amendment requires a change in composition to the Drug Utilization Review Board (DURB). Changes include one additional managed care organization (MCO) representative, which will raise the number of MCO representatives from 2 to 3, as well as allowing MCO representatives to vote on changes. This change increases the total number of DURB members from 18 to 19. The proposed amendment implements House Bill 3286, 88th Texas Legislature, Regular Session, 2023. Texas covers travel expenses for DURB members and adding one more member may increase travel costs.

10. 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.

11. SIGNATURE OF STATE AGENCY OFFICIAL
[redacted]

12. TYPED NAME
Emily Zalkovsky

13. TITLE
State Medicaid Director

14. DATE SUBMITTED
December 15, 2023

15. RETURN TO

Emily Zalkovsky
State Medicaid Director
Post Office Box 13247, MC: H-100
Austin, Texas 78711

FOR CMS USE ONLY

16. DATE RECEIVED
December 15, 2023

17. DATE APPROVED
March 7, 2024

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
March 1, 2024

19. [redacted]AL

20. TYPED NAME OF APPROVING OFFICIAL
Cynthia R. Denemark

21. TITLE OF APPROVING OFFICIAL
Director of Pharmacy

22. REMARKS

12a. Prescribed Drugs, continued

(5) For program benefits, only the direct costs associated with the Program Benefit investment, including non-monetary benefits such as in-kind goods and services, in the program by the manufacturer or labeler will count as reducing the amount of the supplemental rebate owed. The savings or reduced claim experience that may result from the investment does not reduce the amount of the supplemental rebate owed.

(6) Program benefits received by the State will be treated as supplemental rebates and will be shared with the Federal government on the same percentage basis as applied under the national rebate agreement. For those manufacturers who have a Program Benefit Agreement, the State will determine the amount of supplemental rebate owed by the manufacturer at the end of a year. This amount represents 1) the potential total amount of Program Benefit investment by the manufacturer for the year, and 2) the basis for determining the amount of supplemental rebate that will be shared with the Federal government. For the CMS-64, the State will reduce its other Federal claims by the amount of the Federal share of the entire supplemental rebate owed at the end of the "Texas Health and Human Services Commission Title XIX Vendor Drug Program Supplemental Rebate Agreement" term.

(7) Where the program benefit amount is less than the supplemental rebate amount, the program benefit amount plus the difference between the full supplemental rebate amount and the program benefit amount will be shared with the Federal government on the same percentage basis as applied under the national rebate agreement.

12a. Prescribed Drugs, continued

(g) Public Notice: The State Agency will publish notice of the meetings of the DUR Board. The notices will include the topics to be considered at the upcoming meeting and instructions concerning filing of written comments and application to provide public testimony before the committee. The POL will be published on the HHSC website. Within 10 days following the State Agency's decision on the recommendations of the DUR Board, the Agency will publish revisions to the POL on the HHSC website.

(h) No payment will be made for drugs in hospitals, nursing facilities and other institutions where those drugs are included in the reimbursement formula and vendor payments to the institution.

(i) Expanded pharmacy benefits under EPSDT will end on the last day of the month in which the individuals has his or her 21st birthday.

12a. Prescribed Drugs, continued

(5) For program benefits, only the direct costs associated with the Program Benefit investment, including non-monetary benefits such as in-kind goods and services, in the program by the manufacturer or labeler will count as reducing the amount of the supplemental rebate owed. The savings or reduced claim experience that may result from the investment does not reduce the amount of the supplemental rebate owed.

(6) Program benefits received by the State will be treated as supplemental rebates and will be shared with the Federal government on the same percentage basis as applied under the national rebate agreement. For those manufacturers who have a Program Benefit Agreement, the State will determine the amount of supplemental rebate owed by the manufacturer at the end of a year. This amount represents 1) the potential total amount of Program Benefit investment by the manufacturer for the year, and 2) the basis for determining the amount of supplemental rebate that will be shared with the Federal government. For the CMS-64, the State will reduce its other Federal claims by the amount of the Federal share of the entire supplemental rebate owed at the end of the "Texas Health and Human Services Commission Title XIX Vendor Drug Program Supplemental Rebate Agreement" term.

(7) Where the program benefit amount is less than the supplemental rebate amount, the program benefit amount plus the difference between the full supplemental rebate amount and the program benefit amount will be shared with the Federal government on the same percentage basis as applied under the national rebate agreement.

12a. Prescribed Drugs, continued

(g) Public Notice: The State Agency will publish notice of the meetings of the DUR Board. The notices will include the topics to be considered at the upcoming meeting and instructions concerning filing of written comments and application to provide public testimony before the committee. The POL will be published on the HHSC website. Within 10 days following the State Agency's decision on the recommendations of the DUR Board, the Agency will publish revisions to the POL on the HHSC website.

(h) No payment will be made for drugs in hospitals, nursing facilities and other institutions where those drugs are included in the reimbursement formula and vendor payments to the institution.

(i) Expanded pharmacy benefits under EPSDT will end on the last day of the month in which the individuals has his or her 21st birthday.

Revision: HCFA-PM-93-3 (MB)

State/Territory: Texas

Citation

4.26 Drug Utilization Review Program

1927(g)(2)(c)
42 CFR 456.709

F.2. The DUR program assesses data on drug use against expicit predetermined standards including but not limited to monitoring for:

-Therapeudic appropriateness
-Overutilization and underutilization
-Appropriate use of generic products
-Therapeutic duplication
-Drug-disease contraindications
-Drug-drug interactions
-Incorrect drug dosage/duration of drug treatment
-Clinical abuse/misuse

1927(g)(2)(c)
42 CFR 456.711

3. The DUR program through its State DUR Board, using data provided by the Board, provides for active and ongoing educational outreach programs to educate practitioners on common drug therapy problems to improve prescibing and dispensing practices.

1927(g)(3)(A)
42 CFR 456.716(a)

G.1. The DUR program has established a State DUR Board either:

X Directly, or
__ Under contract with a private organization

1927(g)(3)(B)
42 CFR 456.716
(A) and (B)

2. The DUR Board membership includes health professionals (one-third licensed actively practicing pharmacists and one-third but no more than 51 percent licensed and actively practicing physicians) with knowledge and experience in one or mmm moo the following:

-Clinically appropriate prescribing of covered outpatient drugs.
-Clincially appropriate dispensing and monitoring of covered outpatient drugs.
-Drug use review, evaluation and intervention.
-Medical quality assurance.

Details regarding the composition of the DUR Board can be found on the state's website.

927(g)(3)(C)
42 CFR 456.716(d)

3. The activities of the DUR Board include:

-Retrospective DUR,
-Application of standards as defined in section 1927(g)(2)(c), and
-Ongoing interventions for physicians and pharmacists targeted toward therapy problems of individuals identified in the course of retrospective DUR.