Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicaid Integrity Program

Puerto Rico Comprehensive Program Integrity Review

Final Report

September 2009

Reviewers:
Jeff Coady, Review Team Leader
Margi Charleston
Robert Fitzpatrick
Theodore Jackson
Marysol Mateo

TABLE OF CONTENTS

INTRODUCTION

The Centers for Medicare & Medicaid Services' (CMS) Medicaid Integrity Group (MIG) conducted a comprehensive program integrity review of the Puerto Rico Medicaid Program. The onsite portion of the review was conducted at the offices of the Health Insurance Administration (also known as Administración de Seguros de Salud or ASES), the Office of the Medically Indigent (also known as Programa de Asistencia Médica or PAM), the Office of the Secretary of Health, the U.S. Department of Justice, and CMS' Puerto Rico Field Office. The team also visited the offices of two managed care organizations (MCOs).

Medicaid services in Puerto Rico are delivered through capitated MCOs. This review primarily focused on the activities of ASES, which is responsible for the oversight of MCOs serving Medicaid recipients in the Commonwealth. This report describes two effective practices, four areas of non-compliance, and six vulnerabilities in Puerto Rico's program integrity operations.

THE REVIEW

Objectives of the Review

1. Determine compliance with Federal program integrity laws and regulations;
2. Identify program vulnerabilities and effective practices;
3. Help Puerto Rico improve its overall program integrity efforts; and
4. Consider opportunities for future technical assistance.

Overview of Puerto Rico's Medicaid Program

The Puerto Rico Department of Public Health, the single State agency, is responsible for developing, implementing and managing the State Plan that defines the Medicaid Program. The PAM, within the Department of Public Health, administers the Medicaid Program and is responsible for determining recipient eligibility, as well as investigating recipient fraud and abuse. In 1993, an interagency collaborative agreement was established to delegate the implementation of the State Plan to ASES. This agreement requires ASES to implement, administer and negotiate agreements with insurance companies through a managed care model.

The Medicaid managed care program in Puerto Rico is known as Reforma. Recipients under Reforma include individuals eligible for Medicaid, individuals who meet somewhat higher Commonwealth income and resource criteria for medical assistance, and government employees. The ASES contracts with three MCOs to provide comprehensive services to Reforma enrollees. Mental health coverage is a carve-out provided by two prepaid inpatient health plans, known as managed behavioral health organizations. The ASES also contracts with pharmacy benefit managers (PBMs) to implement comprehensive PBM programs for Reforma recipients.

In January 2006, ASES contracted with 10 Medicare Advantage (MA) plans to provide a supplementary package of Reforma benefits for dual eligible individuals. These are referred to

as Medicare Platino plans. The Reforma benefits "wrap around" the existing Medicare benefit packages offered by the MA plans and are delivered by the Platino Plan networks. The three full service Reforma MCOs also offer dual eligibles a Platino Plan option.

Puerto Rico currently utilizes capitated, risk based managed care. Within the MCOs, primary care services are capitated while specialty services are reimbursed on a fee-for-service (FFS) basis. The delivery of carved out behavioral health services is likewise reimbursed through a combination of capitation and FFS payments.

Unlike the 50 states and Washington, D.C., the amount of Federal Medicaid funding which Puerto Rico can receive is subject to a statutory cap. The ceiling was $250.4 million in Federal fiscal year (FFY) 2007. By statute, the Federal medical assistance percentage for Puerto Rico is 50 percent. Based on data from CMS' New York Regional Office, total State and Federal Medicaid expenditures in Puerto Rico for FFY 2007 were $1,103,720,336. Of this figure, the allowable Federal financial participation (FFP) was $390,696,174, or 35 percent. Because of special statutory authority, FFP in Puerto Rico includes spending on the Children's Health Insurance Program (CHIP) and a subsidy grant for dual eligibles receiving the Medicare Part D drug benefit. As of June 2008, the number of recipients in Reforma was 1,446,976. A total of 7,683 providers are currently enrolled in the Puerto Rico Medicaid program.

Program Integrity Section

Neither PAM nor ASES directly conducts or oversees program integrity monitoring of providers. Puerto Rico approaches program integrity though the delegation of anti-fraud and abuse activities to the MCOs. At the time of the onsite visit, PAM was operating with a vacancy in both the fiscal and compliance officer positions, as well as a 40 percent overall vacancy rate within the department. While ASES did not provide specific vacancy numbers, staff commented about insufficient staffing levels.

Methodology of the Review

In advance of an onsite visit, the review team requested that Puerto Rico complete a comprehensive review guide and supply documentation to support its answers. The review guide included such areas as program integrity and disclosures, which were completed by both ASES and PAM. In addition, CMS requested that Puerto Rico have the contracted MCOs complete supplementary questions to the review guide that focused on areas such as provider enrollment, disclosures, post-payment review practices, and other program integrity activities. Since Puerto Rico does not have a Medicaid Fraud Control Unit (MFCU), supplemental review guide questions about investigations and referrals were distributed to the U.S. Department of Justice Field Office in San Juan, Puerto Rico. The MIG review team reviewed the answers and materials that Puerto Rico provided in advance of the onsite visit.

During the week of July 14, 2008, the MIG review team visited the offices of PAM, ASES, the Secretary of Health, the Insurance Commissioner, and the U.S. Attorney's Field Office. The team also interviewed staff from 12 MCOs, including the 3 full-service Reforma MCOs, 2 behavioral health MCOs, and 7 Platino MCOs. The team also interviewed one PBM and

conducted desk reviews of another PBM and Platino MCO; however, information gathered from these activities is not included in the findings in this report.

The focus of the interviews was to determine whether the MCOs were complying with the contract provisions and other Federal regulations relating to program integrity. The team conducted in-depth interviews with representatives from each MCO and met separately with ASES staff to discuss managed care oversight and monitoring effectiveness.

Scope and Limitations of the Review

This review primarily focused on the activities of ASES, which is responsible for the oversight of the MCOs. The team also considered the work of other components and contractors responsible for a range of program integrity functions. Unless otherwise noted, Puerto Rico provided the program integrity-related staffing and financial information cited in this report. Puerto Rico has Federal authorization to use its CHIP allotment as an add-on to its capped Medicaid program dollars. As a result, the Commonwealth's CHIP is part of the Medicaid program and was not separately reviewed. For purposes of this review, the MIG team did not independently verify any staffing, financial, or collections information that the Commonwealth provided.

RESULTS OF THE REVIEW

Effective Practices

Puerto Rico has highlighted an initiative that demonstrates its commitment to enhancing oversight of program integrity activities in Reforma. This initiative is the creation of draft guidelines for the development of program integrity plans.

Draft guidelines for the development of program integrity plans

Puerto Rico has drafted a document entitled "Guidelines for the Development of Program Integrity Plan" [sic], a comprehensive strategy aimed at increasing Reforma plans' compliance with Federal regulations. Puerto Rico intends the guidelines to be an aid for all Reforma contractors to use in expanding and improving their program integrity activities.

Additionally, the MIG review team identified a practice that is particularly noteworthy. The CMS recognizes Puerto Rico's development of a database to help identify applicants who may not be eligible for Reforma and Platino services.

Detection of ineligible recipients

Through the use of a multi-agency centralized database that includes information pertaining to vehicle and land ownership, business records, tax records, and lottery winnings, PAM has been able to accurately verify the finances and resources of Reforma and Platino recipients. This has resulted in over 200,000 recipients being identified as ineligible for services from the Reforma and Platino programs over the past two years.

Regulatory Compliance Issues

The Commonwealth is not in compliance with Federal regulations regarding the lack of active involvement in tracking, investigating and referring providers suspected of fraud, and the reporting of adverse actions taken on provider applications.

The ASES does not have methods for the identification, investigation, and referral of suspected fraud cases.

The regulation at 42 CFR § 455.13 requires a State Medicaid agency to have methods and criteria for identifying suspected fraud cases and investigating those cases, and to have procedures for referring suspected cases of fraud to law enforcement officials. Under 42 CFR § 455.14, agencies must conduct preliminary investigations if they receive complaints of fraud or abuse from any source or identify questionable practices. In addition, under 42 CFR § 455.15, agencies are required to refer cases of suspected provider fraud to a MFCU, or where no MFCU exists, to an appropriate law enforcement agency.

During onsite interviews with the MIG review team, ASES indicated that it delegates all tracking, investigative, and referral functions and responsibilities to its MCO contractors. The agency does not track or investigate complaints against providers on its own, nor does it track and monitor MCO program integrity activities. To verify this, the review team inquired about investigative, administrative, and audit activities over the last three years. The ASES reported no preliminary or full investigations, administrative actions against providers, audits performed or overpayments identified during this period. It also referred no providers to the Department of Justice office over this time, a fact confirmed by the local U.S. Attorney's Field Office.

***Recommendation*:** Develop and implement policies and procedures for identifying and tracking potential provider fraud cases, conducting preliminary and full investigations when necessary, and referring cases of suspected fraud to an appropriate law enforcement agency.

The Commonwealth's MCOs do not conduct full investigations or refer cases of suspected provider fraud appropriately.

Under 42 CFR § 455.15 (a)(2), in States with no certified MFCU, or in cases where no referral to the State MFCU is required, the agency must conduct a full investigation or refer the case to the appropriate law enforcement agency. Although ASES indicated that MCOs are contractually required to consult with the agency on pending fraud investigations and possible referrals, the review team could find no evidence that MCOs notified ASES of providers who came to their attention, or sought guidance on how to conduct full investigations of providers' conduct. This applies to 12 of 12 MCOs reviewed. Furthermore, most MCOs indicated that they did not conduct full investigations in the regulatory sense. As in the case of ASES, there was also no record of MCO referrals to the local U.S. Attorney's Field Office. This was confirmed during interviews with the MCOs and ASES.

***Recommendation*:** Enforce the contract provision requiring MCOs to refer suspected fraud and abuse cases to the State agency for guidance on conducting a full investigation or a possible referral to the Department of Justice.

The ASES does not report to HHS-OIG adverse actions taken on provider applications and MCOs do not inform ASES of adverse actions in MCO provider credentialing.
The regulation at 42 CFR § 1002.3(b) requires reporting to HHS-OIG any adverse actions a State takes on provider applications for participation in the program. ASES does not report to HHS-OIG negative actions that its MCO contractors take on provider applications or actions which limit the ability of providers to participate in the program. Although ASES stated that this responsibility was delegated to the MCOs, there was no evidence that the MCOs reported such actions either to ASES or directly to HHS-OIG. This was confirmed during interviews with the MCOs.

***Recommendation*:** Develop and implement procedures to report to HHS-OIG all adverse actions taken against and limits placed on providers' participation in the program.

Vulnerabilities

The review team identified six areas of vulnerability in Puerto Rico's practices regarding capture of disclosure information, verification of recipient services, and oversight, tracking, and communication issues.

Not capturing ownership, control, and relationship information in the managed care credentialing process.
Based on interviews with MCO staff and review of provider credentialing forms, none of the 12 MCOs reviewed had provider credentialing packets which requested the identity of persons with ownership and control interest and information on the relationships between persons with ownership and control interest. The credentialing packets also did not ask for information on the names of other disclosing entities which persons with ownership and control interests also owned or controlled.

***Recommendation*:** Modify the MCO provider credentialing forms for all provider types to require the full range of ownership and control disclosures required for Medicaid FFS programs at 42 CFR § 455.104.

Not requiring disclosure of business transaction information upon request in the managed care credentialing process.
Based on interviews with MCO staff and a review of provider enrollment and contract documents, none of the 12 MCOs reviewed had provider agreements or credentialing packets containing business transaction disclosure language. By Federal regulation at 42 CFR 455.105, FFS Medicaid providers are required to provide information, upon request, about the ownership

of any subcontractor with whom the provider has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request, and any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request.

***Recommendation*:** Modify the managed care provider agreements to incorporate the same business transaction disclosure language that is required of Medicaid FFS providers.

Not capturing criminal conviction information in the managed care credentialing process. Puerto Rico requires criminal background checks on all providers, including waivered providers, prior to enrollment. However, the Commonwealth has no method to capture equivalent information on owners, persons with control interests, agents and managing employees of the provider. Nor does the Commonwealth have a method for forwarding these disclosures to HHS-OIG within 20 working days, as required by the regulation. Although ASES stated that these responsibilities were delegated to the MCOs, there is no evidence that the MCOs were collecting the required disclosures or reporting them to the Commonwealth for transmission to HHS-OIG. This was confirmed during interviews with all 12 MCOs and a review of provider credentialing forms.

***Recommendations*:** Modify MCO enrollment packages for all provider types to request health care-related criminal conviction information on owners, persons with control interests, agents, and managing employees in addition to providers. Develop and implement procedures to report to HHS-OIG within 20 working days any criminal conviction disclosures made during the MCO credentialing process.

Not verifying with recipients whether services billed by providers were received.
The regulation at 42 CFR § 455.20 requires that the State Medicaid agency must have a method for verifying with recipients whether services billed by providers were received. Although the MCO contract requires that some type of verification of services be undertaken, none of the full-service Reforma MCOs performed any verification of services with recipients. While Platino plans, with the exception of one, routinely send out explanation of benefits for Medicare-only beneficiaries, this practice is not applied to dual eligibles with Reforma wraparound coverage.

***Recommendation*:** Enforce the contract provision requiring that the MCOs perform recipient verification of services.

Not providing oversight, tracking, and coordination regarding fraud and abuse activities.
An interview with PAM and ASES management revealed that data sharing is minimal and inconsistent between the two agencies. This severely limits the overall efficiency and effectiveness of fraud and abuse coordination efforts.

The team also identified a lack of clarity regarding which department, ASES (which runs a complaint phone line called PROBENE) or the Patient Advocacy Office of Puerto Rico, should follow up on beneficiary complaints. This significantly hinders the Commonwealth's ability to effectively track and pursue potential fraud and abuse leads.

Lastly, the review team noted that ASES failed to track fraud and abuse across MCOs in a systemic manner. This failure increases opportunities for fraudulent providers to be enrolled in the program.

***Recommendations*:** Although Medicaid services are contracted to capitated MCOs, ASES has the ultimate responsibility to ensure compliance with Federal regulations and contractual obligations. The ASES should significantly increase its efforts to track, oversee, and coordinate the anti-fraud and abuse activities of the MCOs. The ASES and PAM should share more information on provider and recipient fraud and abuse in order to maximize surveillance capabilities. The tracking of beneficiary complaints should be centralized, or at least better coordinated with other intake agencies, to ensure accurate tracking and accountability for follow-up actions. It should also be utilized to help identify trends in provider fraud. Lastly, ASES should consider developing a database of fraudulent providers which will help it track their activities and decrease opportunities for enrollment in different MCOs.

Not capturing managing employee information on managed care credentialing forms.
Under 42 CFR § 455.101, a managing employee is defined as "a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operations of an institution, organization or agency." Neither ASES nor its MCOs solicit managing employee information in all provider enrollment and credentialing forms. Thus, the Commonwealth would have no way of knowing if excluded individuals are working for providers or health care entities in such positions as billing managers and department heads.

***Recommendation*:** Modify MCO provider enrollment forms and credentialing packages to require capture the identity of managing employees.

CONCLUSION

Puerto Rico applies some effective practices that demonstrate program strengths and the Commonwealth's commitment to program integrity. These effective practices include:

- a sophisticated method of identifying recipient eligibility fraud, and
- proposed guidelines designed to improve program integrity efforts across all Reforma plans.

The CMS supports Puerto Rico's efforts and encourages the Commonwealth to look for additional opportunities to improve overall program integrity.

However, the identification of four areas of non-compliance with Federal regulations is of concern and should be addressed immediately. In addition, six areas of vulnerability were identified. The CMS encourages the Commonwealth to closely examine each area of vulnerability that was identified in this review.

It is important that these issues be rectified as soon as possible. To that end, we will require the Commonwealth to provide a corrective action plan for each area of non-compliance within 30 days from the date of the final report letter. Further, we will request that the Commonwealth include in that plan a description of how it will address the vulnerabilities identified in this report.

The corrective action plan should address how Puerto Rico will ensure that the deficiencies will not recur. It should include the timeframes for each correction along with the specific steps the Commonwealth expects will occur. Please provide an explanation if correcting any of the regulatory compliance issues or vulnerabilities will take more than 90 calendar days from the date of the letter. If Puerto Rico has already taken action to correct compliance deficiencies or vulnerabilities, the plan should identify those corrections as well.

The Medicaid Integrity Group looks forward to working with Puerto Rico on correcting its areas of non-compliance, eliminating its areas of vulnerability, and building on its effective practices.