



Department of Health  
Office of the Secretary

June 18, 2020

Honorable Alex M. Azar II  
Secretary  
Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Mr. Secretary:

***Re: PROGRAM INTEGRITY LEAD, Exception for Extenuating Circumstances or Reasonable Progress***

On December 20, 2019, President Trump enacted Public Law No: 116-94, which temporarily increased the Medicaid federal funds (CAP) for Puerto Rico for FFY 2020 and FFY 2021. The Subtitle B - Medicaid Provisions, Section 202 - Medicaid Funding for the Territories of the Further Consolidated Appropriations Act, 2020, (also known as H.R. 1865), establishes some requirements to be completed on determined dates, and if not completed CMS could impose penalties reducing the FMAP up to 25 basis points per quarter.

The Puerto Rico Department of Health (PRDoH) is designated as the single state agency and as such it has the legal authority to administer Title XIX (Medicaid State Plan) and the Title XXI (CHIP State Plan) of the Social Security Act. The PRDoH is headed by the Secretary of Health. Within PRDoH, the day-to-day operation of Medicaid and CHIP is delegated to the Office of the Medicaid Program (Program). The Medicaid Program, a fully integrated office of the PRDoH, is managed by an Executive Director, who is appointed by the Secretary of PRDoH. The Director reports to the Secretary and, along with other appropriate personnel, participate in the development, analysis, and evaluation of the Program.

The Further Consolidated Appropriations Act requires the PRDoH to designate an officer (*other than the director of such agency*) to serve as the Program Integrity Lead. The Act states that the due date to comply "is not later than six months" of the enactment of the Public Law. Therefore, the due date is set at June 20, 2020. The Act reads as follows:

(7) *PUERTO RICO PROGRAM INTEGRITY REQUIREMENTS.* —

(A) *IN GENERAL.* —

(i) *PROGRAM INTEGRITY LEAD.* —

*Not later than 6 months after the date of enactment of this paragraph, the agency responsible for the administration of Puerto Rico's Medicaid program under title XIX shall designate an officer (other than the director of such agency) to serve as the Program Integrity Lead for such program.*

*Reference: H. R. 1865—572*

The Act states that the FMAP for Puerto Rico can be reduced if the Medicaid Program fails to meet with the *Puerto Rico Program Integrity Requirements*.

(B) *FMAP REDUCTION FOR FAILURE TO MEET ADDITIONAL REQUIREMENTS.* —

(i) *IN GENERAL.* —

*For each fiscal quarter during the period beginning on January 1, 2020, and ending on September 30, 2021:*

*(I) For every clause under subparagraph (A) with respect to which Puerto Rico does not fully satisfy the requirements described in the clause (including requirements imposed under the terms of a plan described in the clause) in the fiscal quarter, the Federal medical assistance percentage applicable to Puerto Rico under section 1905(ff) shall be reduced by the number of percentage points determined for the clause and fiscal quarter under subclause (II).*

*(II) The number of percentage points determined under this subclause with respect to a clause under subparagraph (A) and a fiscal quarter shall be the number of percentage points (not to exceed 2.5 percentage points) equal to —*

*(aa) 0.25 percentage points; multiplied by*

*(bb) the total number of consecutive fiscal quarters for which Puerto Rico has not fully satisfied the requirements described in such clause.*

*Reference: H. R. 1865—573*

Notwithstanding, the Act provides that the *FMAP Reduction for Failure to Meet Additional Requirements* can be avoided if the US HHS Secretary of Health approves an *Exception for Extenuating Circumstances or Reasonable Progress*. The section reads as follows:



*(B) FMAP REDUCTION FOR FAILURE TO MEET ADDITIONAL REQUIREMENTS. —*

*(ii) EXCEPTION FOR EXTENUATING CIRCUMSTANCES OR REASONABLE PROGRESS.*

—

*For purposes of clause (i), Puerto Rico shall be deemed to have fully satisfied the requirements of a clause under subparagraph (A) (including requirements imposed under the terms of a plan described in the clause) for a fiscal quarter if —*

*(I) the Secretary approves an application from Puerto Rico describing extenuating circumstances that prevented Puerto Rico from fully satisfying the requirements of the clause;*

*or*

*(II) in the case of a requirement imposed under the terms of a plan described in a clause under subparagraph (A), Puerto Rico has made objectively reasonable progress towards satisfying such terms and has submitted a timely request for an exception to the imposition of a penalty to the Secretary.*

*Reference: H. R. 1865—573-574*

The Puerto Rico Medicaid Program has always been committed to complying with the Medicaid Program Integrity requirements. To evidence Puerto Rico efforts, we state that:

1. On October 1, 2018, the Puerto Rico Medicaid Program (PRMP) began developing the Program Integrity Office.
2. At that time the Medicaid Program hired the Program Integrity Director through a Staffing Agency. This leadership position reports to the Medicaid Program Executive Director and the Puerto Rico Secretary of Health.
3. Pursuant the 42 CFR sub part 455, the Program Integrity Director developed procedures, as well as all the internal policies.
4. The Program Integrity Director began hiring more professionals with proven experience in the healthcare area. The following six (6) positions are now part of the Program Integrity Office:
  - One Program Integrity Director
  - Two Registered Nurses
  - Two Program Integrity Investigators
  - One Program Policy Analyst



5. During the past 20 months, the Puerto Rico Medicaid Program has been making great progress towards achieving the goal of creating a fully staffed Program Integrity Office. The progress to date is described below:

The Mission of the Program Integrity Office:

- Program Integrity (PI) mission is to protect the Medicaid Trust funds against losses from fraud and abuse and other improper payments, and to improve the integrity of the health care system.
- The mission is achieved through the activities of prevention, detection, investigation, referrals, and prosecution of fraud, waste and abuse.

The Program Integrity Office activities include:

- Monitoring of claims patterns.
- Auditing to ensure compliance with the MCOs contracts and agreements.
- Pursuing civil and criminal prosecution where evidence indicates fraudulent activity has occurred.
- Money restitution where warranted.

The Program Integrity pursues a variety of strategies to address fraud, waste, and abuse, such as:

- Desk audits and reviews.
- Preliminary and complete investigations.
- Share information with the Medicaid Fraud Control Unit (MFCU) at the Puerto Rico Department of Justice.

6. Since February 2019, the Program Integrity group is in an ongoing process of working with the MMIS tools and a case tracking procedure.

7. The Program Integrity team performs data mining to detect providers to be audited. When the Program Integrity team finds outlier providers or high risk in payment data, they prepare a referral for investigation and further actions.

8. The PRDoH has delegated to PRHIA (Puerto Rico Health Insurance Administration or *Administración de Seguros de Salud de Puerto Rico* or ASES, from its acronym in Spanish) the responsibility to contract with managed care organizations (MCOs), to provide access to healthcare services for our Medicaid and CHIP beneficiaries. The Memorandum of Understanding, between the Medicaid Program and ASES, provides that ASES has the responsibility for managing the MCO's contract. The contract has a section describing the fraud, waste, and abuse activities, as well as the MCO's responsibilities.



9. To enhance the integrity activities, each month, the Program Integrity team has a meeting with the MFCU and OIG teams to discuss new fraud trends and review statistics and to evaluate leads information and possible cases to prosecute.

In summary, the main task of the Program Integrity Office is: "To ensure compliance, efficiency, accountability, and coordination within Medicaid and its contracted entities in detecting and preventing fraud, waste, and abuse (FWA)."

Since the Act was enacted, PRDoH has fully committed to designating an officer (other than the director of such agency) to serve as the Program Integrity Lead. To evidence Puerto Rico efforts to comply with the Act's requirements, PRDoH provides a description of the reasonable progress to hire a government employee to serve as Program Integrity Lead.

1. Puerto Rico asked CMS if the current Program Integrity Director, hired through a Staffing Agency, can be consider as "an officer". CMS informed that this position must be filled by a government employee.
2. The Medicaid Program offered the position to the person that is currently hired through a staffing agency. The current Program Integrity Director declined the position due to the salary offered.
3. On May 26, 2020, the PRDoH received authorization from the local Office of Management and Budget to create the Program Integrity Director as a government position. The Director position will be the Program Integrity Lead.
4. Currently, the Medicaid Program is working with the PRDoH's Human Resources Office in order to comply with the local hiring requirements to fill the position. Puerto Rico's Government requires a public call for employment to be published for a period of fifteen days to receive candidates to be evaluated for the position.

Puerto Rico has made significant progress to contract a government officer. On January 7, 2020 Puerto Rico was impacted by a major earthquake which left the Island without power in a state of emergency, additionally the Government of Puerto Rico has been on lockdown since March 16, 2020 due to the COVID-19 public health emergency.

Since the deadline to designate an officer (other than the director of such agency) to serve as the Program Integrity Lead is on June 20, 2020, PRDoH will not have sufficient time to fill the position before said date.

The Puerto Rico Medicaid Program Integrity Office works following federal and local requirements. The current Director complies and exceeds all job description. The Office achievements must continue and should not to be interrupted at this time.



If the above petition cannot be granted, PRDoH asks you to determine that Puerto Rico has made objectively reasonable progress towards satisfying such terms and has submitted a timely request for an exception to the imposition of a penalty.

PRDoH understands that the Medicaid Program complies with the Program Integrity requirements and the only pending item is to hire a government employee to serve as a Program Integrity Lead Officer. Puerto Rico is fully committed to comply with all Act requirements and will continue working to designate an officer (other than the director of such agency) to serve as the Program Integrity Lead.

Due to the extenuating circumstances during the major earthquake suffered on January 7, 2020 and Government shutdown since March 16, 2020 due to the COVID-19 health emergency, PRDoH asks you to approve Puerto Rico's extenuating circumstances that prevented us from fully satisfying the requirements to designate an officer (other than the director of such agency) to serve as the Program Integrity Lead at or before June 20, 2020. In order to comply with the appointment of the Integrity Lead Officer we request an extension of three months in order to finish the process required.

We would not like to see that the federal funds granted for the health of our beneficiaries be at risk. Therefore, Puerto Rico looks forward to your approval.

Cordially,



Lorenzo González-Feliciano, MD, MBA, DHA  
Secretary of Health

- c: Seema Verma, Administrator, Centers for Medicare & Medicaid Services
- Hon. Jenniffer González Colón, Puerto Rico Resident Commissioner
- Laurie Battaglia, CMS
- Nicole McKnight, CMS Region II
- Ricardo Holligan, CMS Region II
- Ivelisse Salce, CMS Region II
- Luz E. Cruz-Romero, PR Medicaid Program
- Jorge E. Galva-Rodríguez, PR Health Insurance Administration
- Jennifer M. Storipan, Executive Director PRFAA

