

# **ATTACHMENT 23**

## **POLICIES AND PROCEDURES FOR REFUNDING OF FEDERAL SHARE OF MEDICAID OVERPAYMENTS TO PROVIDERS**

**PUERTO RICO HEALTH INSURANCE ADMINISTRATION**

**POLICIES AND PROCEDURES FOR REFUNDING OF FEDERAL SHARE OF  
MEDICAID OVERPAYMENTS TO PROVIDERS**

**A. OBJECTIVES (42 CFR 433.300)**

To establish the policies and procedures of the Puerto Rico Health Insurance Administration (ASES for its acronym in Spanish) to recoup overpayments made to its providers in accordance with 42 CFR 433, Subpart F—*Refunding of Federal Share of Medicaid Overpayments to Providers* and to implement:

- 1) Section 1903(d)(2)(A) of the Social Security Act (the “Act”), which directs that quarterly Federal payments to the States under title XIX (Medicaid) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.
- 2) Section 1903(d)(2) (C) and (D) of the Act, which provides that a State has 1-year from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the Federal Medicaid payment to the State is made; and that adjustment will be made at the end of the 1-year period, whether or not recovery is made, unless the State is unable to recover from a provider because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectable.
- 3) Section 1903(d)(3) of the Act, which provides that the Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

**B. DEFINITIONS (42 CFR 433.304)**

- 1) **Abuse** (in accordance with 42 CFR 455.2) - provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program.
- 2) **Discovery** (or discovered) - identification by any ASES, the Federal Government, or the provider of an overpayment, and the communication of that overpayment finding or the initiation of a formal recoupment action without notice as described in 42 CFR 433.316.
- 3) **Fraud** (in accordance with 42 CFR 455.2) - an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.
- 4) **Overpayment** - the amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act.

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- 5) **Provider** - any individual or entity furnishing Medicaid services under a provider agreement with the Managed Care Organizations (MCOs) under contract with ASES.
- 6) **Recoupment** - any formal action by ASES to initiate recovery of an overpayment without advance official notice by reducing future payments to a provider.
- 7) **Third party** (in accordance with 42 CFR 433.136) - an individual, entity, or program that is or may be liable to pay for all or part of the expenditures for medical assistance furnished under a State plan.

**C. APPLICABILITY (42 CFR 433.310)**

The provisions of these policies and procedures apply to:

- 1) Overpayments made to providers that are discovered by ASES;
- 2) Overpayments made to providers that are initially discovered by the provider and made known to ASES; and
- 3) Overpayments that are discovered through Federal reviews.

**D. BASIC REQUIREMENTS FOR REFUNDS (42 CFR 433.312)**

- 1) ASES has 1-year from the date of discovery of an overpayment to a provider to recover or seek to recover the overpayment before the Federal share must be refunded to CMS.
- 2) ASES must refund the Federal share of overpayments at the end of 1-year period following discovery, whether or not ASES has recovered the overpayment from the MCO that contracted the provider. Notwithstanding, ASES is not required to refund the Federal share of an overpayment made to a provider when ASES is unable to recover the overpayment amount because the provider has been determined bankrupt or out of business in accordance with 42 CFR 433.318.
- 3) The date upon which an overpayment occurs is the date upon which ASES, using its normal method of reimbursement (e.g., check, interfund transfer), makes the payment involving unallowable costs to the MCO that contracted with the provider.

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**E. WHEN DISCOVERY OF OVERPAYMENT OCCURS AND ITS SIGNIFICANCE.  
(42 CFR 433.316)**

- 1) The date on which an overpayment is discovered is the beginning date of the 1-year period allowed for a State to recover or seek to recover an overpayment before a refund of the Federal share of an overpayment must be made to CMS.
- 2) Unless ASES chooses to initiate a formal recoupment action against the MCO that contracted the provider without first giving written notification of its intent, ASES must notify the MCO in writing of any overpayment it discovers in accordance with ASES' policies and procedures and must take reasonable actions to attempt to recover the overpayment in accordance with State law and procedures.
- 3) An overpayment resulting from a situation other than fraud is discovered on the earliest of:
  - a) The date on which ASES first notifies in writing an MCO that contracted with a provider of an overpayment and specifies a dollar amount that is subject to recovery;
  - b) The date on which a provider or an MCO initially acknowledges a specific overpaid amount in writing to ASES; or
  - c) The date on which ASES initiates a formal action to recoup a specific overpaid amount from an MCO or a provider without having first notified the MCO or provider in writing.
- 4) Overpayments resulting from fraud. An overpayment resulting from fraud is discovered on the date of the final written notice (as defined in 42 CFR 433.304) of the overpayment determination that ASES sends to an MCO or a provider. ASES may treat an overpayment made to an MCO or a provider as resulting from fraud under this subsection only if it has referred the MCO or the provider's case to the Medicaid Fraud Control Unit (MFCU), as required by 42 CFR 455.15, 42 CFR 455.21 or 42 CFR 455.23, and the MFCU has provided ASES with written notification of acceptance of the case; or if the MFCU has filed a civil or criminal action against a provider and has notified ASES.
- 5) If a Federal review at any time indicates that ASES has failed to identify an overpayment or that ASES has identified an overpayment but has failed to either send written notice of the overpayment to the MCO or the provider that specified a dollar amount subject to recovery or initiate a formal recoupment from the provider without having first notified the provider in writing, CMS will consider the overpayment as discovered on the date that the Federal official first notifies ASES in writing of the overpayment and specifies a dollar amount subject to recovery.

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- 6) Any adjustment in the amount of an overpayment during the 1-year period following discovery (made in accordance with the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution process specified in ASES' administrative policies and procedures) has the following effect on the 1-year recovery period:
  - a) A downward adjustment in the amount of an overpayment subject to recovery that occurs after discovery does not change the original 1-year recovery period for the outstanding balance.
  - b) An upward adjustment in the amount of an overpayment subject to recovery that occurs during the 1-year period following discovery does not change the 1-year recovery period for the original overpayment amount. A new 1-year period begins for the incremental amount only, beginning with the date of ASES' written notification to the provider regarding the upward adjustment.
- 7) A partial collection of an overpayment amount by ASES from an MCO or a provider during the 1-year period following discovery does not change the 1-year recovery period for the original overpayment amount due to CMS.
- 8) Any appeal rights extended to an MCO or a provider do not extend the date of discovery.

**F. OVERPAYMENTS INVOLVING PROVIDERS WHO ARE BANKRUPT OR OUT OF BUSINESS (42 CFR 433.318)**

- 1) ASES is not required to refund the Federal share of an overpayment made to a provider as required by 42 CFR 433.312(a) to the extent that ASES is unable to recover the overpayment because the provider has been determined bankrupt or out of business in accordance with the provisions of this section. ASES must notify the MCO or the provider that an overpayment exists in any case involving a bankrupt or out-of-business provider and, if the debt has not been determined uncollectable, take reasonable actions to recover the overpayment during the 1-year recovery period in accordance with policies prescribed by applicable State law and administrative procedures.
- 2) Overpayments are considered debts that ASES is unable to recover within the 1-year period following discovery if the following criteria are met:
  - a) The provider has filed for bankruptcy, as specified in paragraph 3 of this section; or
  - b) The provider has gone out of business and the MCO or ASES is unable to locate the provider and its assets, as specified in paragraph (4) of this section.
- 3) ASES is not required to refund to CMS the Federal share of an overpayment at the end of the 1-year period following discovery, if:

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- a) The provider has filed for bankruptcy in Federal court at the time of discovery of the overpayment or the provider files a bankruptcy petition in Federal court before the end of the 1-year period following discovery; and
  - b) ASES is on record with the court as a creditor of the petitioner in the amount of the Medicaid overpayment.
- 4) ASES is not required to refund to CMS the Federal share of an overpayment at the end of the 1-year period following discovery if the provider is out of business on the date of discovery of the overpayment or if the provider goes out of business before the end of the 1-year period following discovery. A provider is considered to be out of business on the effective date of a determination to that effect under State law. ASES must:
- a) Document its efforts to locate the party and its assets. These efforts must be consistent with applicable State policies and procedures; and
  - b) Make available an affidavit or certification from the appropriate State legal authority establishing that the provider is out of business and that the overpayment cannot be collected under State law and procedures and citing the effective date of that determination under State law.

A provider is not out of business when ownership is transferred within the State unless State law and procedures deem a provider that has transferred ownership to be out of business and preclude collection of the overpayment from the provider.

- 5) If the 1-year recovery period has expired before an overpayment is found to be uncollectable under the provisions of this section, if ASES recovers an overpayment amount under a court-approved discharge of bankruptcy, or if a bankruptcy petition is denied, ASES must refund the Federal share of the overpayment in accordance with the procedures specified in 42 CFR 433.320.

**G. PROCEDURES FOR REFUNDS TO CMS (42 CFR 433.320)**

- 1) In accordance with section 1903(d) of the Social Security Act, ASES shall reduce its claims of reimbursement to the extent of any overpayment in the expense reports submitted to CMS, and on the corresponding quarter with respect to the adjustment.
- 2) ASES must refund the Federal share of overpayments that are subject to recovery to CMS through credit on the Quarterly Statement of Expenditures (Form CMS-64). Accordingly, the Federal share of overpayments subject to recovery must be credited on the Form CMS-64 report submitted for the quarter in which the 1-year period following discovery, established in accordance with 42 CFR 433.316, ends.

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- 3) A credit on the Form CMS-64 must be made whether or not the overpayment has been recovered by ASES from the provider.
- 4) Effect of reporting collections and submitting reduced expenditure claims. (1) The State is not required to refund the Federal share of an overpayment at the end of the 1-year period if the State has already reported a collection or submitted an expenditure claim reduced by a discrete amount to recover the overpayment prior to the end of the 1-year period following discovery.
- 5) If ASES does not refund the Federal share of such overpayment, the State will be liable for interest on the amount equal to the Federal share of the non-recovered, non-refunded overpayment amount. Interest during this period will be at the current Value of Funds Rate (CVFR), and will accrue beginning on the day after the end of the 1-year period following discovery until the last day of the quarter for which the State submits a CMS-64 report refunding the Federal share of overpayment.
- 6) ASES is not required to report on the Form CMS-64 any collections made on overpayment amounts for which the Federal share has been refunded previously. Furthermore, if ASES has refunded the Federal share of an overpayment and subsequently makes recovery by reducing future provider payments by a discrete amount, ASES need not reflect that reduction in its claim for Federal financial participation.
- 7) If the amount of an overpayment is adjusted downward after the agency has credited CMS with the Federal share, ASES may reclaim the amount of the downward adjustment on the Form CMS-64. Under this provision:
  - a) Downward adjustment to an overpayment amount previously credited to CMS is allowed only if it is properly based on the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution processes specified in ASES' administrative policies and procedures.
  - b) The 2-year filing limit for retroactive claims for Medicaid expenditures does not apply. A downward adjustment is not considered a retroactive claim but rather a reclaiming of costs previously claimed.
- 8) If an overpayment has not been determined uncollectable in accordance with the requirements of 42 CFR 433.318 at the end of the 1-year period following discovery of the overpayment, ASES must refund the Federal share of the overpayment to CMS in accordance with the procedures specified in this section.
- 9) If ASES recovers any portion of an overpayment under a court-approved discharge of bankruptcy, ASES must refund to CMS the Federal share of the overpayment amount collected on the next quarterly expenditure report that is due to CMS for the period that includes the date on which the collection occurs.

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- 10) If a provider's petition for bankruptcy is denied in Federal court, ASES must credit CMS with the Federal share of the overpayment on the later of:
- a) The Form CMS-64 submission due to CMS immediately following the date of the decision of the court; or
  - b) The Form CMS-64 submission for the quarter in which the 1-year period following discovery of the overpayment ends.
- 11) If a provider is determined bankrupt or out of business under this section after the 1-year period following discovery of the overpayment ends and ASES has not been able to make complete recovery, ASES may reclaim the amount of the Federal share of any unrecovered overpayment amount previously refunded to CMS. CMS allows the reclaim of a refund if ASES submits to CMS documentation that it has made reasonable efforts to obtain recovery. If ASES reclaims a refund of the Federal share of an overpayment:
- b) In bankruptcy cases, ASES must submit to CMS a statement of its efforts to recover the overpayment during the period before the petition for bankruptcy was filed; and
  - c) In out-of-business cases, ASES must submit to CMS a statement of its efforts to locate the provider and its assets and to recover the overpayment during any period before the provider is found to be out of business in accordance with 42 CFR 433.318.
- 12) ASES must report the following information to support each Quarterly Statement of Expenditures Form CMS-64:
- a) Amounts of overpayments not collected during the quarter but refunded because of the expiration of the 1-year period following discovery;
  - b) Upward and downward adjustments to amounts credited in previous quarters;
  - c) Amounts of overpayments collected under court-approved discharges of bankruptcy;
  - d) Amounts of previously reported overpayments to providers certified as bankrupt or out of business during the quarter; and
  - e) Amounts of overpayments previously credited and reclaimed by ASES.

**H. MAINTENANCE OF RECORDS (42 CFR 433.322)**

ASES must maintain a separate record of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR 75.361 through 75.370.

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