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BY ELECTRONIC MAIL

March 31, 2022
Mr. Jorge Galva
Executive Director
Puerto Rico Health Insurance Administration

Re: Abarca Health, LLC PBM/RA Contract

Dear Mr. Galva

In accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico (“FOMB”) established pursuant to Section 204(b)(2) of PROMESA (the “Policy”), we have reviewed the proposed Pharmacy Benefit Manager and Rebate Aggregator contract between the Puerto Rico Health Insurance Administration (“ASES” for its Spanish acronym) and Abarca Health, LLC and (the “Proposed Contract”).

After reviewing the Proposed Contract, the FOMB concludes “Approved with Observations”. Observations related to the Proposed Contract are set forth in Appendix A attached hereto.

Our review is solely limited to compliance of the Proposed Contract with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the FOMB does not cover a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local. In addition, the FOMB has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the applicable contract. Any material changes to the Proposed Contract must be submitted to the FOMB for review and approval **prior to execution.**

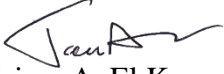
This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information not available when the review was

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conducted. In addition, during the course of our review, we may receive information which we may refer to the relevant authorities.

This letter is issued only to ASES and solely with respect to the Proposed Contract.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jaime A. El Koury', with a stylized flourish at the end.

Jaime A. El Koury
General Counsel

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ABARCA HEALTH, LLC – ASES

Fiscal Plan Alignment

This review covers the proposed Pharmacy Benefit Manager and Rebate Aggregator contract between the Puerto Rico Health Insurance Administration ("ASES" for its Spanish acronym) and Abarca Health, LLC (the "Contractor") (the "Proposed Contract").

The Proposed Contract stems from a competitive procurement process awarded on December 3, 2021 and arises from ASES' authority to manage the Puerto Rico Government Health Plan (the "GHP") and provide essential health services for eligible medically indigent beneficiaries.

Previously, ASES engaged different contractors to manage the **Pharmacy Benefit Manager** ("PBM") and the Pharmacy Program Administrator services under the GHP. Accordingly, ASES and Abarca originally signed Contract Number 2014-000035 for Abarca to act as the Pharmacy Program Administrator for ASES's GHP Rebate Program from July 1, 2013 until June 30, 2014. On the other hand, ASES had a separate contract with another contractor (2014-000044) for PBM services under the GHP for the same period. Both contracts have been extended multiple times, with the final amendments extending the terms of these contracts from **April 1, 2022 to December 31, 2022**. These amendments were approved with observations by the FOMB on **March 15, 2022**.

The Proposed Contract, on the other hand, provides for PBM and Rebate Aggregator ("RA") services in a single contract. As such, under **PBM services**, Abarca will be responsible for developing, implementing, and offering a comprehensive PBM program to ASES and participating Managed Care Organizations ("MCOs") with the following responsibilities:

- Manage and credential the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits;
- Maintain a Pharmacy Call Center for the Pharmacy Network;
- Adjudicate and process Pharmacy Claims and payment, handle Coordination of Benefits ("COB") with other health insurance plans, including Medicare;
- Develop, maintain and update the Maximum Allowable Cost ("MAC") list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico's Department of Consumer Affairs ("DACO") to provide drug price information for DACO's drug price control list, as amended from time to time;
- Provide a comprehensive Drug Utilization Review ("DUR") program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring;
- Support ASES and the contracted MCOs with the High-Cost High Need ("HCHN") Program and other care management programs;
- Develop and implement a compliance plan and Fraud, Waste and Abuse detection initiatives;
- Assist in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee;
- Manage the Academic Detailing program;

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- Update and maintain standard operating procedure manual(s) for PBM services;
- Maintain an Information System, Information management processes and technical support to meet GHP requirements;
- Provide robust reporting and online reporting tool as described in the Contract;
- Retain and store data as required under the Contract;
- Develop strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

Under **RA Services**, Abarca shall:

- Produce drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the Medicaid Drug Rebate Program (the “MDRP”) and ASES's schedule requirements for non-MDRP rebates;
- Process and submit to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting;
- Prove Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
- Reconcile and resolve drug rebate disputes with pharmaceutical manufacturers;
- Ensure quality control to validate accuracy of drug Rebate Data;
- Maintain administrative, physical, and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
- Update and maintain standard operating procedure manual(s) for Rebate program administration;
- Maintaining a Data repository system that interfaces with multiple Data sources;
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting;
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers;
- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.

The Proposed Contract also contemplates a 9-month implementation period, beginning on April 1, 2021, to ensure the adequate provision of services by the January 1, 2023 commencement date.

ASES, on the other hand, will, among other things, be responsible for administering all aspects of the Proposed Contract, monitor Contractor’s performance, provide oversight of all aspects of the Contractor’s operations, and monitor the Contractor’s compliance with all applicable Puerto Rico and federal laws and regulations. Moreover, ASES will conduct an implementation review of the Contractor’s operations to confirm that the Contractor is capable and prepared to perform all required administrative functions and to provide high-quality services to GHP Enrollees.

With regards to Fiscal Plan compliance, we note that the Proposed Contract would allow ASES to facilitate the Commonwealth’s inclusion in the MDRP by January 1, 2023, in accordance with the requirements issued by the Centers for Medicare and Medicaid Services (“CMS”). Notably, Puerto Rico’s entry into MDRP is expected to yield higher gross rebates from drug manufacturers

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compared to those from the local drug rebate program the Commonwealth currently has in place, via which the Commonwealth directly negotiates with drug manufacturers to return a portion of cost for prescription drugs (expected gross rebates are \$264 million in Fiscal Year 2022).¹

Upon the Commonwealth's inclusion into the MDRP, Puerto Rico will also share a portion of the rebate revenue with the Federal Government, to the extent it reduces the costs eligible for federal matching. Estimates received from ASES indicate that the MDRP could bring in nearly **\$607 million in gross rebates** in Fiscal Year 2024 and **\$643 million** in Fiscal Year 2025.

The Proposed Contract has a term from January 1, 2023 until December 31, 2025 and a Maximum Payable Amount of **\$23,612,533.00**, payable pursuant to the following distribution across **4 Fiscal Years** (FY2023-FY2026):

- General Funds \$3,184,347.00
- Special Revenue Funds \$10,896,873.00
- Federal Funds \$9,530,312.00

Insofar as the Proposed Contract will be funded with future Certified Budgets, ASES must ensure that such budgets incorporate all costs related to the Proposed Contract.

Finally, we note that the award of the Request for Proposal ("RFP") for PBM/RA is currently under judicial review in the Puerto Rico Court of Appeals resulting from an action brought by a non-selected proponent. Moreover, the Puerto Rico General Services Administration (the "GSA") issued a report (ASG-I-21-006) assessing the RFP process carried out by ASES in relation to the award of the Proposed Contract. This report concludes that the PBM and RA services provided pursuant to the Proposed Contract constitute non-professional services and, as such, needed to be procured through the GSA. ASES, on the other hand, contends that the contemplated services are **professional** due to their highly specialized nature. Despite this discrepancy in the categorization of services, we must note that the GSA has not taken affirmative steps to enforce its position in a court of competent jurisdiction. On the contrary, upon noticing this discrepancy, the FOMB issued letters to ASES and the GSA urging them to come to an agreement as to the nature of the services, to allow for the provision of PBM/RA services within the timeframe required for the implementation of the MDRP. However, both entities replied with letters reiterating their respective positions.

However, we note that on February 2021, the United States Government Accountability Office (the "GAO") issued a Report concluding, *inter alia*, that "because CMS has not provided oversight of Puerto Rico's Medicaid procurements, it is unable to determine whether the territory has processes in place to help ensure competition and minimize the risk of fraud, waste, and abuse." In addition, the report recommended that "[t]he Administrator of CMS should take steps to implement ongoing, risk-based oversight of Medicaid procurement processes in Puerto Rico."

Based on this, the FOMB understands that the procurement of Medicaid related processes, such as PBM/RA services are crucial to ensure the Commonwealth's timely compliance with the GAO's

¹ These funds currently enter the Commonwealth budget as Special Revenue Funds and are applied directly against the costs of Medicaid premiums.

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recommendation, the MDRP, and CMS deadlines, which initially required U.S. territories to join the MDRP on April 1, 2022, pursuant to CMS Rule 84 FR 64783 but were subsequently extended until January 1, 2023.² Therefore, we understand that this process should not be delayed any longer and at this juncture, we encourage ASES and the GSA to reach an agreement as to this matter, to ensure that services can be rendered in a timely and efficient manner, in accordance with applicable deadlines.

Finally, it should be noted that Section 204(b)(2) of PROMESA requires the FOMB not only to ensure that contracts to be executed by the Commonwealth and its instrumentalities are not inconsistent with the Certified Fiscal Plan, but also to ensure that such contracts promote market competition. Thus, in addition to reviewing the Proposed Contract, the FOMB also conducted a thorough review of the documents related to the RFP process. The documents provided by ASES do not reflect that any action or practice taken during the RFP had the effect of discouraging or undermining market competition.

ASES is expected to inform the FOMB of any budgetary differences other than those specified in Appendix A (Contract Submissions Questionnaire) and to request a re-review of the Proposed Amendments should any changes occur.

This contract review was conducted on the basis of information submitted by ASES. The FOMB has not independently verified the information included in the submission. Should the FOMB become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.

² Specifically, CMS Rule 84 FR 64783 initially required U.S. territories to join the MDRP on April 1, 2022, unless they applied for and received a waiver. However, on November 19, 2021, CMS issued a final rule to delay the April 1, 2022 effective date until January 1, 2023.