

# FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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## **BY ELECTRONIC MAIL**

December 28, 2022

Ms. Edna Marín Ramos  
Executive Director  
Puerto Rico Health Insurance Administration

### **Re: Abarca Health, LLC PBM/RA Contract**

Dear Ms. Marín Ramos,

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

After reviewing the Proposed Contract, the FOMB concludes “Approved with **Conditions.**” Conditions 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.**

Ms. Edna Marín Ramos

December 28, 2022

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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 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,



Jaime A. El Koury  
General Counsel

## **APPENDIX A**

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ASES – ABARCA HEALTH, LLC

### **Fiscal Plan Alignment**

This review covers the Proposed Contract between ASES and Abarca Health, LLC (the “Contractor”) for the provision of Pharmacy Benefit Manager (“PBM”) and Rebate Aggregator (“RA”) services.

The Proposed Contract stems from a competitive procurement process and arises from ASES’ authority to manage the Puerto Rico Government Health Plan (the “GHP”) and provide essential health services to eligible medically indigent beneficiaries.

Under PBM services, the Contractor shall be responsible for:

- a. Forming, credentialing and managing a pharmacy network that provides access to covered pharmacy services across Puerto Rico;
- b. Maintaining a pharmacy call center;
- c. Adjudicating and processing claims and payments with other health insurance plans, including Medicare;
- d. Developing, maintaining and updating the Maximum Allowable Cost (“MAC”) list for generic and multi-source brand drugs reimbursements, and if requested by ASES, coordinating with the Puerto Rico Department of Consumer Affairs to provide drug price information for its drug price control list, as amended from time to time;
- e. Providing a comprehensive Drug Utilization Review program, to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization trends for specific prescription drugs flagged by ASES for special monitoring;
- f. Supporting ASES and contracted Managed Care Organizations (“MCOs”) with care management programs by facilitating pharmacy data, helping the MCOs and ASES with the pharmacy metrics across the multiple programs and, assisting in the development of special programs or initiatives;
- g. Developing and implementing a compliance plan and a fraud, waste and abuse detection initiative;
- h. Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and the Pharmacy Financial Committee;
- i. Managing the Academic Detailing program, which involves orientation programs to pharmacies, special projects and instructions developed by ASES, and the identification of patterns or trends among prescribers to provide orientations with the MCOs;
- j. Maintaining an information system, information management processes and technical support to meet GHP requirements;
- k. Providing robust reporting and online reporting tools to retain and store data;
- l. Developing strategies to promote an active MCO participation in the development of educational activities for enrollees and providers;
- m. Performing pharmacy audits; and
- n. Providing an electronic platform for pharmacies to appeal MAC pricing to reimburse the difference between actual drug acquisition costs and MAC list reimbursement amounts.

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Under RA services, the Contractor shall be responsible for comprehensive management of the Medicaid Drug Rebate Program (“MDRP”) for all applicable covered outpatient drugs in accordance with Section 1927(b)(1) of the Social Security Act and the terms of the Medicaid National Drug Rebate Agreement. Specific services include, without limitation:

- a. Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements;
- b. Processing and submitting the drug utilization and information necessary for CMS-64 reporting. Contractor shall provide the rebate information necessary for the completion of the CMS-64 form to be reviewed, finalized and submitted to the Center for Medicare and Medicaid Services (“CMS”) by ASES;
- c. Providing reports on retail pharmacy drug rebates to ASES and its designees on a quarterly basis;
- d. Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers;
- e. Ensuring quality control to validate accuracy of drug rebate data;
- f. Maintaining 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;
- g. Updating and maintaining standard operating procedure manual(s) for rebate program administration;
- h. Maintaining a data repository system that interfaces with multiple data sources;
- i. Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting; and
- j. Creating and maintaining a secure web portal for data sharing with pharmaceutical manufacturers;
- k. Processing, invoicing and reporting federal rebates through its rebate administration system according to federal processing and schedule requirements;
- l. Performing analysis and research to identify areas of improvement within the rebate program administration, including any approaches for invoicing, processing, and accounting of drug rebates;
- m. Processing, invoicing, and reporting rebates for all populations not eligible to receive MDRP rebates;
- n. Developing and conducting a rebate program RFP for all authorized therapeutic classes. Evaluate and adjudicate the proposals, rebate negotiations and contracts with the pharmaceutical manufacturers, supported by and under the instructions of ASES;
- o. Providing ASES with any original and/or copies of the pharmaceutical manufacturers’ proposals and final negotiated agreements for ASES’s execution;
- p. Updating and maintaining standard operating procedure manual(s) for rebate administration;
- q. Generating CMS required reports as a condition of Puerto Rico’s MDRP participation; and
- r. Providing sufficient qualified, experienced, and knowledgeable staff and personnel to efficiently administer program requirements and provide all required direct and indirect services for the duration of the Proposed Contract.

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

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requirements issued by the CMS. Notably, Puerto Rico's entry into MDRP is expected to yield higher gross rebates from drug manufacturers 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.

The Proposed Contract has a term from January 1, 2023 to December 31, 2025 and a maximum payable amount of **\$16,772,937**, payable pursuant to the following distribution across four fiscal years (FY2023-FY2026):

- General Funds: \$2,978,293
- Special Revenue Funds: \$3,878,032
- Federal Funds: \$9,916,612

The Proposed Contract also contemplates certain optional services that would raise the maximum payable amount by \$6,839,596, to \$23,612,533, should ASES choose to implement them. We remind ASES that, in the event it chooses to implement such services, the resulting amendment to the Proposed Contract must be submitted to the FOMB for review and approval prior to execution to ensure compliance with the Policy.

Finally, we note that the Proposed Amendment was submitted to the FOMB for review without the identification of a source of funds. Instead, ASES identified its source of funds on December 21, 2022, when it submitted updated financial information and clarified the funds would be covered by the 2023 Consolidated Appropriations Act (the "Omnibus Bill"). However, the Omnibus Bill has not been signed into law as of the date of this letter, which means ASES has effectively failed to identify a source of funds to cover the costs of the Proposed Contract.

Accordingly, approval of the Proposed Contract is **conditioned** upon the signing of the Omnibus Bill into law. Once approved, ASES must submit an updated Fund Availability Certification within **5 business days** in the format set forth in the FOMB's Contract Submission Questionnaire, including accurate information for the corresponding account.

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.

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

*This 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.*