



December 18, 2018

NORMATIVE LETTER 18-1218

To: Managed Care Organizations (MCOs) contracted to offer services to the Government Health Plan (GHP): Triple S, Salud; First Medical Health Plan (FMHP); MMM Multihealth; Molina Healthcare; Plan de Salud Menonita (PSM)

Re: RECOUPMENT OF OVERPAYMENTS

The purpose of this communication is to clarify to all MCOs that the recovery of Overpayments identified by ASES or its representatives on behalf of ASES cannot be retained by an MCO. An MCO may only retain a recovered Overpayment if it is identified and recovered by the MCO during the same contract year the Overpayment was issued, and so long as the Overpayment was not included in the data set used by actuaries to calculate the per member per month (PMPM) rates for the following contract year. Accordingly, the full amount of an Overpayment that is recovered as a result of ASES or its representatives identifying the Overpayment must be forwarded to ASES or the amount of the identified Overpayment will be withheld from future payments to the MCO.

Per federal regulations, the Agreement between ASES and the MCOs sets forth ASES's retention policy for the recovery of Overpayments made to a provider. *See* 42 C.F.R. 438.608(d)(1)(i); 81 Fed. Reg. 27497, 27609 (May 6, 2016) (granting states the discretion to establish their own approach to overpayment recoveries in their managed care contracts). The Agreement requires MCOs to forward the full amount of recovery to ASES, as MCOs are entitled to share in the recovery. The Agreement defines "Overpayments" as "[a]ny funds that a person or entity receives which that person or entity is not entitled to under Title XIX of the Social Security Act as defined in 42 CFR 438.2." Attachment 23 to the Agreement states that Overpayments to providers discovered by ASES are to be recovered by ASES. Moreover, pursuant to Section 16.10.1 of the Agreement, "any Overpayment remittance due to ASES from the Contractor will be offset from future payments to the Contractor." In the event Overpayments have been identified by ASES through an audit

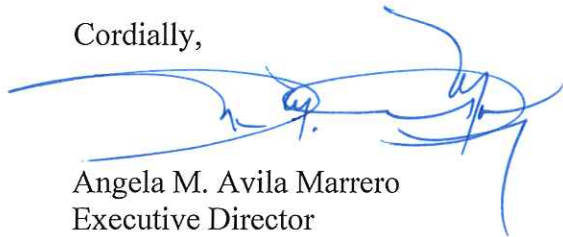


performed by it or its authorized representative, the full amount of the recovery must be forwarded to ASES or the amount of the identified Overpayment will be withheld from future payments.

Article 53 of the Agreement also establishes the Contractor's obligation to assist and cooperate with ASES in any and all matters related to or arising out of any audit, at no cost to ASES. Furthermore, the Agreement establishes that MCOs shall be solely responsible for any costs incurred for any audit related inquiries or matters and cannot charge or collect any fees or compensation from ASES for any matter, activity, or inquiry related to, arising out of, or based on an audit.

We encourage all MCOs to closely monitor claims payments to avoid future Overpayments and perform diligent auditing of its claims activities in order to avoid future recoupments by ASES.

Cordially,



Angela M. Avila Marrero
Executive Director