

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**CMS'S RELIANCE ON PUERTO RICO'S
CERTIFICATION SURVEYS COULD
NOT ENSURE THE SAFETY OF
MEDICARE BENEFICIARIES WHO
RECEIVED HOME HEALTH CARE
SERVICES PROVIDED BY ST. LUKE'S
HOME HEALTH AGENCY - JUANA DIAZ**

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Office of Inspector General

<http://oig.hhs.gov>

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

INTRODUCTION

CMS's reliance on Puerto Rico's certification surveys could not ensure the safety of Medicare beneficiaries who received home health care services provided by St. Luke's Home Health Agency-Juana Diaz.

WHY WE DID THIS REVIEW

Home health services are provided to individuals in their place of residence on the basis of a physician's order as part of a written plan of care. These services include visits by registered nurses, physical and occupational therapists, and home health aides. Home health agencies (HHAs) must comply with Federal and State requirements to ensure that home health services are furnished by qualified workers. Prior Office of Inspector General reviews of personal care services (PCS) found that services were provided by PCS attendants who did not meet State qualification requirements.¹ We are performing reviews in various States to determine whether similar vulnerabilities exist at HHAs.

OBJECTIVE

Our objective was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on the Puerto Rico Department of Health's (health department) certification surveys of St. Luke's Home Health Agency-Juana Diaz (Juana Diaz) ensured the safety of Medicare beneficiaries.

BACKGROUND

Medicare Home Health Services

Title XVIII of the Social Security Act (the Act) established the Medicare program, which provides health insurance coverage to people aged 65 and over, people with disabilities, and people with end-stage renal disease. CMS administers the Medicare program. Medicare Parts A and B cover home health services provided to eligible beneficiaries (the Act sections 1812(a)(3) and 1832(a)(2)(A)).

An HHA is a public agency, private organization, or a subdivision of either that is primarily engaged in providing skilled nursing and other therapeutic services, including physical therapy and speech therapy, to individuals in their place of residence. CMS is responsible for ensuring the protection of the health and safety of Medicare beneficiaries under the care of an HHA.² CMS has delegated responsibility for HHA compliance with Medicare health, welfare, and safety standards, including personnel qualifications, to State Survey Agencies.³

¹ *Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement* (OIG-12-12-01), November 2012.

² Section 1891(b) of the Social Security Act.

³ CMS's *State Operations Manual*, Appendix B (revision 11, August 12, 2005).

Federal and Commonwealth Requirements for Home Health Agencies and Their Workers

The Act includes requirements that are intended, in part, to ensure the quality of home health services provided to Medicare beneficiaries. Federal regulations set the standards that an HHA must comply with to participate in the Medicare program, including that HHAs must comply with all applicable Federal, State, and local laws and regulations (42 CFR § 484.12(a)). Medicare providers must also ensure that services are of a quality that meets professionally recognized standards of health care (42 CFR § 1004.10(b)).

The Laws of Puerto Rico Annotated (P.R. Laws Ann.) prohibit HHAs from using a worker to provide house visits unless the worker has presented a certification from the Puerto Rico Police indicating that he or she is not a registered sex offender (P.R. Laws Ann. Title 8 § 483).⁴

Recertification Surveys of Home Health Agencies in Puerto Rico

In Puerto Rico, CMS contracts with the health department to conduct recertification surveys of HHAs approximately every 3 years. Specifically, the health department's Assistant Secretariat for Regulation and Accreditation of Health Facilities (survey unit) is responsible for conducting these surveys.⁵ These surveys determine whether HHAs meet Federal and Commonwealth requirements to participate in the Medicare program. However, section 1865(a)(1) of the Act exempts providers from such surveys if they are "accredited" by a CMS-approved national accreditation organization. For an accreditation organization to be an acceptable alternative to a survey certification agency, the scope of its reviews must encompass the scope of the State survey agency's reviews.

The Community Health Accreditation Program (CHAP) is recognized by CMS to conduct accreditation surveys of HHA providers.⁶

St. Luke's Home Health Agency-Juana Diaz

St. Luke's Episcopal Church Home Care Program is a private nonprofit organization that operates 14 HHAs across Puerto Rico, including one in Juana Diaz, Puerto Rico, that provides home health services throughout Juana Diaz and surrounding municipalities. For the period January 1, 2009, through June 30, 2010, Juana Diaz received Medicare payments for home health services totaling approximately \$2 million.

Juana Diaz opted to have CHAP conduct its accreditation surveys. In 2010, CMS requested that the health department perform a validation survey of the accreditation survey that CHAP performed on Juana Diaz. These validation surveys serve as a method for CMS to ensure that agencies such as CHAP are properly conducting accreditation surveys. As of the end of our

⁴ The law specifies that providers of care services to children and the elderly must meet this requirement.

⁵ The health department is responsible for issuing administrative orders to the survey unit to provide instructions and guidance for surveying HHAs' compliance with applicable laws and regulations.

⁶ HHAs accredited by CHAP, as of August 28, 1992, are deemed to meet Medicare conditions of participation and are Medicare-participating HHAs. CHAP conducts accreditation surveys every 3 years.

fieldwork, the most recent survey of Juana Diaz was the health department validation survey performed on July 21, 2010.

HOW WE CONDUCTED THIS REVIEW

We limited our review to Juana Diaz personnel who provided direct care to Medicare beneficiaries during June 2010. During this period, a total of 43 Juana Diaz workers, including nurses, speech therapists, social workers, and physical and occupational therapists, provided direct services to Medicare beneficiaries.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology.

FINDING

CMS'S RELIANCE ON PUERTO RICO CERTIFICATION SURVEYS COULD NOT ENSURE THE SAFETY OF MEDICARE BENEFICIARIES

CMS's reliance on the health department's certification surveys of Juana Diaz could not fully ensure the safety of Medicare beneficiaries. Specifically, none of the 43 Juana Diaz employees had a certification from the Puerto Rico Police indicating that he or she was not a registered sex offender.⁷ Juana Diaz officials stated that the HHA had not established procedures for requiring employees to obtain certification that they were not registered sex offenders because HHA officials were not aware of the Commonwealth requirement.

The health department's survey unit conducted a validation survey of Juana Diaz on July 21, 2010; however, surveyors did not determine whether Juana Diaz had verified the sex offender status of its employees. According to survey unit officials, this occurred because the health department never issued the survey unit an administrative order regarding how the unit should review compliance with Commonwealth requirements for verifying HHA workers' sex offender status. Consequently, the survey unit did not review compliance with these requirements in any of its surveys of HHAs in Puerto Rico.

Health department officials acknowledged that this occurred because the department did not have procedures for periodically reviewing the enacted Commonwealth laws. Therefore, an administrative order was not created in a timely manner to require the survey unit to incorporate compliance with sex offender registration requirements in the certification surveys.

⁷ We subsequently entered information for the 43 employees into the U.S. Department of Justice's National Sex Offender public Web site and determined that none of the employees were registered sex offenders.

RECOMMENDATION

To improve protection provided to Medicare beneficiaries receiving home health services, we recommend that CMS work with CHAP and the health department to ensure that Juana Diaz and other HHAs meet Commonwealth requirements for ensuring that their employees are not registered sex offenders.

HEALTH DEPARTMENT COMMENTS

In written comments on our draft report, the health department stated that, when it conducted its July 21, 2010, survey of Juana Diaz, there were no statutory or regulatory requirements for a national background check for HHA employees. However, it described steps it has taken since our draft report to ensure that HHAs throughout Puerto Rico request sex offender reports for their employees.

The health department also stated that, in December 2012, it received Federal funding to develop and implement policies and procedures for performing background checks on prospective direct care workers in long-term-care settings. On the basis of that funding, the health department designed a new background check system. The health department attached to its comments a September 2014 report that details the steps it is taking to fully implement the new Puerto Rico Background Check Program and comply with the requirements applicable to States participating in CMS's National Background Check Program.

The health department's comments are included as Appendix B.⁸

OFFICE OF INSPECTOR GENERAL RESPONSE

We agree with the health department's statement that no requirements for a national background check for HHA employees were in place when it conducted its survey of Juana Diaz. However, at the time of the survey, the health department had not yet incorporated Commonwealth law (P.R. Laws Ann. Title 8 § 483, effective in 2000) prohibiting HHAs from hiring workers who did not present certification that they were not registered sex offenders. As a result, when it conducted its validation survey in July 2010, the health department did not review Juana Diaz's personnel files to ensure that Juana Diaz's 43 workers were not sex offenders.

CMS COMMENTS

In its written comments on our draft report, CMS concurred with our recommendation and indicated that it would review our findings to determine whether it should request that the health department examine Juana Diaz's practices. CMS's comments are included in their entirety as Appendix C.

⁸ We did not include the report attached to the health department's comments because it contains sensitive information.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered Juana Diaz workers who provided home health care services to Medicare beneficiaries during June 2010.

We did not review Juana Diaz's or the health department's overall internal control structure. Rather, we limited our review of internal controls to those applicable to our objective.

We performed fieldwork at the St. Luke's Episcopal Church Home Care Program's administrative offices in Ponce, Puerto Rico, and at the health department's offices in Bayamon, Puerto Rico.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and Commonwealth requirements;
- met with health department officials to gain an understanding of the validation/certification survey process;
- obtained and reviewed CHAP's latest accreditation survey report for Juana Diaz as well as Juana Diaz's corrective action plan;
- obtained and reviewed the health department's July 21, 2010, validation survey report for Juana Diaz and supporting documentation, including Juana Diaz's corrective action plan;
- identified 43 Juana Diaz workers who provided direct care to Medicare beneficiaries in June 2010;
- reviewed Juana Diaz's personnel records for each of the workers to determine compliance with Federal and Commonwealth qualification requirements;
- accessed the U.S. Department of Justice's National Sex Offender Public Website to determine whether any of the workers were registered sex offenders; and
- met with health department and Juana Diaz officials to discuss our audit results.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: HEALTH DEPARTMENT COMMENTS



March 11, 2015

Response to Report Number: A-02-11-01030

James P. Edert
Regional Inspector General
for Audit Services
Office of Audit Services, Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

Dear Mr. Edert:

We are including comments to U.S. Department of Health and Human Services, Office of the Inspector General draft report entitled *CMS's Reliance on Puerto Rico's Certification Survey Could Not Ensure the Safety of Medicare Beneficiaries Who Received Home Health Care Services Provided by St. Luke's Home Health Agency-Juana Diaz*.

The Center for Medicare/Medicaid Services (CMS) has delegated the responsibility for HHA compliance with Medicare health, welfare, and safety standards, including personnel qualifications, to State Survey Agencies, in this case specifically to the Puerto Rico Department of Health. In Puerto Rico, CMS contracts with the PR Health Department to conduct recertification surveys of Home Health Agency (HHA), specifically, the Secretariat for Regulation and Accreditation of Health Facilities (SARAFS) conducts said surveys approximately every 36 month.

Every fiscal year CMS provides the Mission Priority Document (MPD), which states the survey frequency & priority on which each facility should be surveyed, to the State Survey Agencies. As stated in the draft report, the PR Department of Health's (hereinafter referred by its acronym PRDOH) most recent certification survey of St. Luke's Home Health Agency-Juana Diaz was performed on July 21, 2010.

As per the Center for Medicare/Medicaid Services (CMS) Mission Priority Document (MPD), which states the workload for each fiscal year (FY), the PRDOH conducts re-certification surveys approximately every 36 month none DEEM facilities (23) and the DEEM facilities (18). The St. Luke's Episcopal Church Home Care Program is a DEEM facility which is surveyed every 36 month by the Community Health Accreditation Partner (CHAP). The PRDOH only conducts 1% of all DEEM facilities for a Validation Survey every year and the sample is selected by CMS every FY. In 2010 St. Luke's Episcopal Church Home was assigned by CMS for a

Mr. James P. Edert
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validation survey. On July 21, 2010 a validation survey was conducted by the SARAFS-Medicare Division personnel. During the 2010 validation survey Act 300 was not requested inasmuch as compliance with it since there was no statutory or regulatory requirement for a national background check for home health care employees.

The Department of Health through its Medicare Division has taken the following steps to ensure protection to the patients in the hospice or home health centers. After recommendations were provided by the OIG, the PRDOH Medicare Division shared via e-mail with all hospice and home care providers and with the Association of Home Care and Hospice (“Asociación de Agencias de Servicios de Salud en el Hogar y Hospicios de Puerto Rico Inc, (AASSHH)), the Hospice Association as well as all the rest of Medicare certified facilities in Puerto Rico, Act No. 300 and Regulation 7323 and the requested compliance therewith. All Home Care and Hospices started to request the sex offender’s reports for all their employees as well as the No Penal/Criminal Record Certification (“Certificación de No Antecedentes Penales”).

The PRDOH Surveyors credential sample list was evaluated and reviewed on 2013 and shared with the OIG. Said credential sample list now includes the facility’s compliance with the Act No. 300. As stated before, in Act No. 300 both requirements are looked, the sex offender report and the criminal history.

On the other hand, on December 2012, the Department of Health of Puerto Rico received federal funds to identify and implement the procedures and policies related to conduct background checks on prospective direct care workers in long-term care setting. Based on this the Department of Health has designed a new background check system. All the information related is contain in the document named “Puerto Rico Background Check Program Report” (September 2014) which is attached with this letter. We are certain that once the Puerto Rico Background Check Program is fully implemented we will be able to further protect the patients covered by Medicare.

In the meantime the survey and certification division of Medicare will continue to request compliance with the background check as per federal requirements (minimum) until instructions and final process is implemented by the Puerto Rico Department of Health.

If any questions, please do not hesitate to contact me directly at (787) 765-2929 ext. 3406

Cordially,



ANA C. RÍUS ARMENDÁRIZ, M.D
Secretary of Health

APPENDIX C: CMS COMMENTS



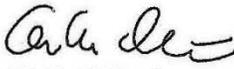
DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

JUL 28 2015

200 Independence Avenue SW
Washington, DC 20201

To: Daniel R. Levinson
Inspector General
Office of the Inspector General

From: Andrew M. Slavitt 
Acting Administrator
Centers for Medicare & Medicaid Services

Subject: CMS's Reliance on Puerto Rico's Certification Surveys Could not Ensure the Safety of Medicare Beneficiaries Who Received Home Health Care Services Provided by St. Luke's Home Health Agency- Juana Diaz (A-02-11-01030)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report. CMS is committed to ensuring Medicare and Medicaid beneficiaries receive high quality health care.

Home Health Agencies (HHA) must meet certain conditions of participation in order to participate in the Medicare and Medicaid programs. These conditions include qualifications for personnel. States may add additional qualifications that go beyond the Federal requirements that HHAs are required to meet.

CMS contracts with the Puerto Rico Department of Health to conduct recertification surveys of HHAs in Puerto Rico approximately every 3 years to determine their compliance with Medicare conditions of participation. However, section 1865(a)(1) of the Social Security Act permits providers "accredited" by an approved national accreditation organization (AO) to be exempt from such surveys by a State survey agency. St. Luke's Home Health Agency- Juana Diaz (Juana Diaz) opted to have the Community Health Accreditation Program (CHAP), a national AO with a CMS-approved home health accreditation program, conduct its accreditation surveys rather than the health department. At the time of their survey there were no requirements for a national background check for HHA employees. In December of 2012, the Puerto Rico Department of Health received federal funding to develop and implement policies and procedures for performing background checks on prospective direct patient access employees in long-term care settings, including HHAs.

CMS is currently reviewing the OIG's findings in its report that Juana Diaz did not meet certain Federal and State requirements for verifying the qualifications of workers and will request a complaint investigation of those findings by the health department if indicated. If a complaint investigation is conducted on the home health agency and deficient practices are identified, the HHA will be required to provide a plan of correction for all deficient practices. A failure by the HHA to make the necessary corrections and regain compliance with the Conditions of

Participation could result in the termination of its Medicare provider agreement, regardless of the HHA's continued accreditation status with the AO.

OIG Recommendation

The OIG recommends that CMS work with CHAP and the health department to ensure that Juana Diaz and other HHAs meet Commonwealth requirements for ensuring that its employees are not registered sex offenders.

CMS Response

CMS concurs with this recommendation. CMS monitors recognized national AOs and their CMS-approved accreditation programs on an ongoing basis. When issues are identified, we work with the AO to resolve the issues. CMS will continue to work with the health department and CHAP to reinforce adherence by Puerto Rico HHAs to Federal and Commonwealth requirements.