

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**NEW MEXICO DID NOT ENSURE  
ATTENDANTS WERE QUALIFIED TO  
PROVIDE PERSONAL CARE SERVICES,  
PUTTING MEDICAID ENROLLEES AT  
RISK**

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**August 2024  
A-06-22-02000**

# *Office of Inspector General*

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## Report in Brief

Date: August 2024

Report No. A-06-22-02000

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why OIG Did This Audit

Prior OIG audits of New Mexico's Medicaid personal care services (PCS) program found that New Mexico did not always ensure that PCS were provided by individuals qualified in accordance with Federal and State requirements.

The objective of this audit was to determine whether New Mexico ensured that PCS were provided by qualified attendants under Federal and State requirements.

### How OIG Did This Audit

Our audit covered 2.7 million paid Medicaid PCS encounter claims (claims) and the qualifications of the attendants who provided those services during CY 2019 (audit period). We reviewed a stratified random sample of 300 claims to determine whether the associated services were provided by attendants whose qualifications complied with Federal and State requirements.

## New Mexico Did Not Ensure Attendants Were Qualified To Provide Personal Care Services, Putting Medicaid Enrollees at Risk

### What OIG Found

New Mexico did not ensure that PCS were provided by qualified attendants in accordance with Federal and State requirements. For 106 of the 300 sampled claims, the associated attendants met qualification requirements. However, for the remaining 194 claims, the associated attendants did not meet 1 or more requirements related to criminal background checks, abuse registry checks, tuberculosis testing, written competency tests, annual training, and CPR and first aid certifications.

On the basis of our sample results, we estimate that 69 percent of attendants associated with PCS claims during our audit period did not meet qualification requirements.

### What OIG Recommends and New Mexico Comments

We made a series of recommendations to New Mexico, including that it work with Medicaid managed care organizations to develop procedures to monitor PCS providers' compliance with attendant qualification requirements and to educate providers about these requirements. The full recommendations are in the report.

In written comments on our draft report, New Mexico concurred with all of our recommendations and described corrective actions it had taken or planned to take. New Mexico said that it has amended its contracts with the Medicaid managed care organizations to require them to perform annual audits of all Agency Based Community Benefit (ABCB) providers and to develop corrective actions for programmatic deficiencies. New Mexico also said that it has recently revised the Medicaid Managed Care Policy Manual (the Manual) to outline the requirements of the PCS providers. New Mexico added that it will pursue an amendment to the Manual to require MCOs to conduct a semiannual webinar with contracted providers on PCS attendant qualifications. Finally, New Mexico will distribute an annual newsletter to providers and include a copy of this report in the first newsletter to demonstrate the significance of attendant qualifications.

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## INTRODUCTION

### WHY WE DID THIS AUDIT

Prior Office of Inspector General (OIG) audits of New Mexico's Medicaid personal care services (PCS) program found that the New Mexico Human Services Department (State agency) did not always ensure that PCS were provided by an individual (attendant) qualified to provide such services in accordance with Federal and State requirements.<sup>1</sup> The audits identified several deficiencies related to attendants' qualifications, including areas related to tuberculosis (TB) testing, annual training, and certifications in cardiopulmonary resuscitation (CPR) and first aid. We found that approximately one out of four services were provided by an attendant who did not meet all Federal and State qualification requirements and recommended that the State agency ensure that the PCS providers maintain evidence that they complied with these requirements.

We conducted this audit to determine whether the State agency ensured that PCS were provided by qualified attendants throughout New Mexico for calendar year (CY) 2019 (audit period).

### OBJECTIVE

Our objective was to determine whether the State agency ensured that PCS were provided by qualified attendants in accordance with Federal and State requirements.

### BACKGROUND

#### Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities (Title XIX of the Social Security Act). The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although each State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

The Medicaid managed care programs are intended to increase access to, and improve the quality of, health care for Medicaid enrollees. States contract with managed care organizations

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<sup>1</sup> See Appendix B for a list of related reports.

(MCOs) to make services available to each enrollee for a monthly fixed payment known as a capitation payment.<sup>2</sup>

### **New Mexico's Medicaid Program Transition to Managed Care From Fee-For-Service**

During our prior audits, the State agency offered Medicaid benefits on a fee-for-service (FFS) basis in which it paid providers directly for each covered service received by a Medicaid enrollee. In 2014, the New Mexico Medicaid program (named Centennial Care) transitioned to a managed care structure. Under managed care, the State agency contracts with MCOs and relies on them to monitor all Medicaid providers.<sup>3</sup>

MCOs submit to the State agency encounter data, which are records that document services provided to individuals enrolled in the MCOs' managed care plans (Medicaid enrollees). The encounter data include information about specific services provided to Medicaid enrollees, dates of the services, and the payment for the services. The State agency maintains the encounter data in its Medicaid Management Information System (MMIS).

### **New Mexico's Personal Care Services Program**

Centennial Care covers long-term care services provided outside of nursing homes. The services are available through a program called Community Benefit and help enrollees remain living in their homes or in the community. PCS include assistance with daily tasks such as hygiene, meals, and mobility. PCS providers enroll with the State agency and contract with MCOs prior to providing services. Centennial Care uses two models to guide it as it provides PCS: a consumer-directed model and a consumer-delegated model.<sup>4</sup> This audit covered PCS provided under the consumer-delegated model in which the consumer (enrollee) chooses the PCS provider to perform all employer-related tasks (e.g., scheduling, employing, and terminating qualified attendants). Under this model, the PCS provider is also responsible for ensuring that authorized services are provided to the enrollee.

Federal and State regulations require PCS to be provided by an individual qualified to provide such services,<sup>5</sup> and State regulations require the following attendant qualifications: (1) passing

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<sup>2</sup> A capitation payment is a payment the State agency periodically makes to an MCO on behalf of each individual enrolled under a contract. The State agency makes these payments regardless of whether a Medicaid enrollee receives services during the period covered by the payment (42 CFR § 438.2).

<sup>3</sup> During our audit period, the State agency contracted with three MCOs.

<sup>4</sup> The consumer-directed model allows consumers (enrollees) to oversee their own service care delivery and requires that the enrollee work with a PCS agency acting as a fiscal intermediary agency to process all financial paperwork to be submitted to the MCO.

<sup>5</sup> Social Security Act § 1905(a)(24)(B), 42 CFR § 440.167, and New Mexico Administrative Code (NMAC) 8.308.12.13(J)(10)(d).



a criminal background check,<sup>6</sup> (2) clearing an abuse registry check,<sup>7</sup> (3) proof of a TB test with a negative result,<sup>8</sup> (4) passing an initial written competency test, (5) completing 12 hours of annual training, (6) having a current CPR certification, and (7) having a current first aid certification.<sup>9</sup>

## HOW WE CONDUCTED THIS AUDIT

Our audit covered consumer-delegated PCS Medicaid managed care claim lines (hereafter referred to as “claims”) and the qualifications of the attendants who provided the associated services during our audit period.<sup>10</sup> We developed a sampling frame of 2,696,049 consumer-delegated PCS claims from which we selected a stratified random sample of 300 claims consisting of 100 claims each from two providers associated with our prior audits and 100 claims from all other New Mexico PCS providers.<sup>11</sup>

We identified 274 unique attendants associated with the 300 sampled claims and determined whether these attendants met Federal and State qualification requirements to provide PCS when the services were provided. We then determined the total number of sampled claims provided by attendants who did not meet these qualification requirements for each of the three strata we sampled from.

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, Appendix C contains details on Federal and State requirements related to consumer-delegated PCS, Appendix D contains our statistical sampling methodology, and Appendix E contains our sample results and estimates.

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<sup>6</sup> NMAC 7.1.9.8.

<sup>7</sup> NM Statute § 27-7A-3 (2005) and NMAC 8.11.6.8.

<sup>8</sup> State agency, *Managed Care Policy Manual* section 8.14 and CDC recommendations on TB screening and testing of health care personnel, issued May 17, 2019.

<sup>9</sup> State agency, *Managed Care Policy Manual* section 8.14.

<sup>10</sup> These claims are submitted to MCOs by PCS providers and are known as encounter claims.

<sup>11</sup> Two of the four providers associated with our previous audits were sold prior to our audit period. We did not review separate samples of claims for these providers; however, their PCS claims were included in our stratum that included all other New Mexico PCS providers.

## FINDINGS

The State agency did not ensure that PCS were provided during our audit period by qualified attendants in accordance with Federal and State requirements. Specifically, for 106 of the 300 claims we reviewed, the associated attendant met qualification requirements. However, for the remaining 194 claims, the associated attendant did not meet at least one qualification requirement (referred to as a “deficiency”). See Figure 1 for a breakdown of these deficiencies. Appendix F contains details on the requirements these attendants did not meet.

**Figure 1: Breakdown of Attendant Qualification Deficiencies**

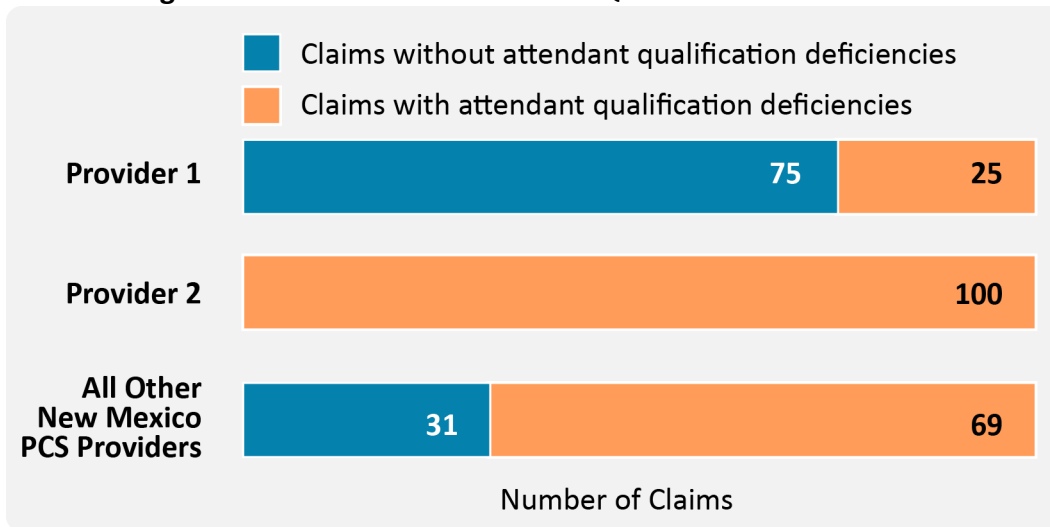


Table 1 details the number of attendant requirements not met (deficiencies) for our sampled claims.

**Table 1: Attendant Requirements Not Met**

Attendant Requirement	Number of Deficiencies		
	Provider 1	Provider 2	All Other New Mexico PCS Providers
Criminal Background Check	0	9	25
Abuse Registry Check	12	20	27
Tuberculosis Results	3	8	25
Competency Test	2	100	17
12 Hours Training	9	68	46
CPR Training	1	20	25
First Aid Training	2	21	35
<b>Total</b>	<b>29</b>	<b>246</b>	<b>200</b>

For our audit period, the State agency did not ensure that PCS were provided by qualified attendants because, according to State agency officials, it relied on MCOs to provide oversight of the Medicaid program. According to the State agency officials, its contracts with the MCOs contained a provision (section 4.1.7) for overseeing the Medicaid program. However, the contracts did not include specific provisions related to PCS attendant qualifications. In addition, MCO officials told us that they did not have procedures to monitor attendant qualifications and did not offer PCS provider education activities related to these qualification requirements (e.g., guidance letters, webinars).

On the basis of our sample results, we estimate that attendants associated with 69 percent of PCS claims with services provided during our audit period did not meet qualification requirements.

### **NO CRIMINAL BACKGROUND CHECK**

Federal regulations (42 CFR § 440.167) require that PCS be provided by an individual qualified to provide such services. Under NMAC 8.308.12.13(J)(10)(d), non-covered services include services provided by attendants who have not met qualification requirements, including those for criminal background checks. Under NMAC 8.308.12.13(J)(3), PCS providers must comply with the requirements in the State agency's *Managed Care Policy Manual* (the Manual). NMAC 7.1.9.8, which is incorporated in the Manual, specifies that, among other requirements, (1) a release-of-authorization form must be submitted to undergo a criminal history screening, (2) attendants are required to consent to a nationwide and statewide criminal history screening upon offer of employment, and (3) the provider must maintain documentation relating to all employees evidencing compliance with this rule.<sup>12</sup>

For 34 of the 300 sampled claims, a criminal background check was not conducted on the associated attendant prior to the date of service. We noted that, for 1 of the 34 sampled claims, the associated attendant failed a criminal background check approximately 7 months after the date of service for the sampled claim. The PCS provider submitted documentation to the State agency that the attendant had been terminated soon after it became aware of the results of the criminal background check.<sup>13</sup>

On the basis of our sample results, we estimate that attendants associated with 23 percent of PCS claims with services provided during our audit period did not have a criminal background

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<sup>12</sup> There are some exceptions under NMAC 7.1.9.8 for requiring a criminal background check. However, the scope of our audit did not include testing for all of the requirements.

<sup>13</sup> The attendant was hired July 5, 2018, the date of service was Feb. 15, 2019, and the background check result indicating that the attendant was not qualified to provide services was determined Sept. 24, 2019.

check.<sup>14</sup> These omissions put Medicaid enrollees' physical safety at risk because PCS providers did not always conduct criminal background checks for attendants upon their hire dates.

### **NO ABUSE REGISTRY CHECK**

Under NM Statute § 27-7A-3 (2005), providers must document that they checked New Mexico's abuse registry for each applicant being considered for employment prior to hiring. Also, NMAC 8.11.6.8 requires the provider, prior to hiring an attendant, to inquire whether the applicant is listed in the abuse registry, which would preclude employment.

For 59 of the 300 sampled claims, an abuse registry check was not conducted on the associated attendant prior to the date of service.

On the basis of our sample results, we estimate that attendants associated with 26 percent of PCS claims with services provided during our audit period did not have an abuse registry check.<sup>15</sup> These omissions put Medicaid enrollees' physical safety at risk because PCS providers did not always conduct abuse registry checks for attendants upon their hire dates.

### **NO NEGATIVE TEST RESULT FOR TUBERCULOSIS**

Under NMAC 8.308.12.13(J)(3), PCS providers must comply with the requirements in the Manual. Section 8.14 of the Manual states that providers and attendants are to follow the New Mexico Department of Health and the Centers for Disease Control and Prevention (CDC) guidelines for preventing the transmission of TB. The CDC issued a document for recommendations on TB screening and testing of health care personnel that stated all health care personnel should be given a TB skin test, and if positive, a chest x-ray should be performed to determine whether there is active TB.<sup>16</sup>

For 36 of the 300 sampled claims, a test result for TB was not obtained for the associated attendant prior to the date of service. Specifically, a TB skin test or chest x-ray was not conducted and determined to be negative prior to the date of service.

On the basis of our sample results, we estimate that attendants associated with 23 percent of PCS claims with services provided during our audit period did not have a TB skin test or chest

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<sup>14</sup> The calculation of the estimate takes the stratified sample design into account. See Appendix E, Table 12.

<sup>15</sup> See footnote 14.

<sup>16</sup> Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019 | MMWR. Available online at [https://www.cdc.gov/mmwr/volumes/68/wr/mm6819a3.htm?s\\_cid=mm6819a3\\_w#B1\\_down](https://www.cdc.gov/mmwr/volumes/68/wr/mm6819a3.htm?s_cid=mm6819a3_w#B1_down). Accessed on Apr. 29, 2021.

x-ray conducted and determined to be negative.<sup>17</sup> These omissions put Medicaid enrollees at risk of catching a potentially deadly infectious disease from attendants.

### **NO INITIAL WRITTEN COMPETENCY TEST**

Federal regulations (42 CFR § 440.167) require that PCS be provided by an individual qualified to provide such services. Under NMAC 8.308.12.13(J)(10)(d), non-covered services include services provided by attendants who have not met the requirements and qualifications of a personal care attendant. Under NMAC 8.308.12.13(J)(3), PCS providers must comply with the requirements in the Manual. Section 8.14 of the Manual requires attendants to pass an initial written competency test with a minimum score of 80 percent within the first 3 months of employment.

For 119 of the 300 sampled claims, the associated attendant did not take and pass an initial written competency test.

On the basis of our sample results, we estimate that attendants associated with 22 percent of PCS claims with services provided during our audit period did not take and pass an initial written competency test.<sup>18</sup> These omissions put Medicaid enrollees at risk of receiving inadequate care by an unqualified attendant.

### **ANNUAL TRAINING REQUIREMENT NOT MET**

Federal regulations (42 CFR § 440.167) require that PCS be provided by an individual qualified to provide such services. Under NMAC 8.308.12.13(J)(10)(d), non-covered services include services provided by attendants who have not met the qualifications, including training. Under NMAC 8.308.12.13(J)(3), PCS providers must comply with the requirements in the Manual. Section 8.14 of the Manual requires providers to conduct or arrange for a minimum of 12 hours of annual training.

For 123 of the 300 sampled claims, the associated attendant did not meet the annual 12-hour training requirement for the training year associated with the date of service.<sup>19</sup>

On the basis of our sample results, we estimate that attendants associated with 46 percent of PCS claims with services provided during our audit period did not complete the required

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<sup>17</sup> See footnote 14.

<sup>18</sup> See footnote 14.

<sup>19</sup> We assessed annual training based on what each provider's definition was for measuring an attendant's annual training year. Some providers used a calendar year, and others used the anniversary of the attendant's hire date.

12 hours of annual training.<sup>20</sup> These omissions put Medicaid enrollees at risk of receiving inadequate care by an untrained attendant.

### **NO CURRENT CARDIOPULMONARY RESUSCITATION CERTIFICATION**

Federal regulations (42 CFR § 440.167) require that PCS be provided by an individual qualified to provide such services. Under NMAC 8.308.12.13(J)(10)(d), non-covered services include services provided by attendants who have not met the qualifications, including training. Under NMAC 8.308.12.13(J)(3), PCS providers must comply with the requirements in the Manual. Section 8.14 of the Manual requires attendants to obtain CPR certification within the first 3 months of employment and must maintain certification continually while providing PCS.

For 46 of the 300 sampled claims, the associated attendant did not have a current CPR certification for the date of service.

On the basis of our sample results, we estimate that attendants associated with 24 percent of PCS claims with services provided during our audit period did not have a current CPR certification.<sup>21</sup> These omissions put Medicaid enrollees at risk of not getting immediate, life-saving care in the case of a cardiac event.

### **NO CURRENT FIRST AID CERTIFICATION**

Federal regulations (42 CFR § 440.167) require that PCS be provided by an individual qualified to provide such services. Under NMAC 8.308.12.13(J)(10)(d), non-covered services include services provided by attendants who have not met the qualifications, including training. Under NMAC 8.308.12.13(J)(3), PCS providers must comply with the requirements in the Manual. Section 8.14 of the Manual requires attendants to obtain first aid certification within the first 3 months of employment and must maintain certification continually while providing PCS.

For 58 of the 300 sampled claims, the associated attendant did not have a current first aid certification for the date of service.

On the basis of our sample results, we estimate that attendants associated with 33 percent of PCS claims with services provided during our audit period did not have a current first aid certification.<sup>22</sup> These omissions put Medicaid enrollees at risk of not getting immediate, life-saving care in emergency situations.

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<sup>20</sup> See footnote 14.

<sup>21</sup> See footnote 14.

<sup>22</sup> See footnote 14.

## **CONCLUSION**

On the basis of our sample results, we estimate that attendants associated with 69 percent of PCS claims with services provided during our audit period did not meet qualification requirements.

During our audit period, the State agency did not ensure that PCS were provided by attendants that met all qualification requirements because, according to State agency officials, it relied on MCOs to provide oversight of the Medicaid program. However, the State agency's contracts with the MCOs did not include specific provisions related to PCS attendant qualifications. Additionally, the MCOs did not have procedures to monitor attendants' qualifications. As a result, the health and safety of Medicaid enrollees receiving PCS was put at risk.

## **RECOMMENDATIONS**

We recommend that the New Mexico Human Services Department work with the MCOs to:

- develop procedures to monitor PCS provider compliance with attendant qualifications, including those related to criminal background checks, abuse registry checks, TB tests, initial written competency tests, annual training, and CPR and first aid certifications;
- educate providers more frequently through methods such as guidance letters or webinars to increase PCS providers' understanding of attendant qualification requirements; and
- take corrective action against providers that do not ensure that attendants comply with qualification requirements, which could include removing providers that repeatedly fail to comply with the State's PCS program.

In addition, we recommend that the New Mexico Human Services Department:

- share the results of our audit report with PCS providers statewide to emphasize the importance of attendants meeting qualification requirements and
- clarify the oversight provisions in its contracts with MCOs to require MCOs to monitor PCS providers' compliance with attendant qualification requirements and report monitoring results to the State agency.

## STATE AGENCY COMMENTS

In written comments on our draft report, the New Mexico Health Care Authority (State agency)<sup>23</sup> concurred with all of our recommendations and described corrective actions it had taken or planned to take to address them.

In response to our first recommendation, the State agency said that it has amended its managed care contracts to require the MCOs to perform annual audits of all Agency Based Community Benefit (ABCB) providers.<sup>24</sup> The focus of these annual audits is to ensure that employees hired and retained by the ABCB providers meet all State and Federal requirements.

In response to our second recommendation, the State agency said it would pursue an amendment to the Manual to require the MCOs to conduct a semiannual webinar with contracted providers that will include a review of PCS attendant qualifications. In addition, the State agency said it will distribute an annual newsletter to all ABCB providers that will highlight attendant qualifications and potential penalties for noncompliance with these requirements.

In response to our third recommendation, the State agency said it had revised the Manual to outline the requirements of the PCS providers. The State agency also said that ABCB providers that do not maintain proper documentation will be subject to recoupment of funds by the State for claims paid when audit findings are related to improper documentation.

In response to our fourth recommendation, the State agency said it would include a copy of our audit report in its first newsletter to providers to demonstrate the significance of PCS attendant qualification requirements.

In response to our fifth recommendation, the State agency said that it has modified its MCO contracts to include a requirement that each MCO develop an annual compliance plan and annual compliance evaluation targeted to test controls, identify non-compliance, and develop corrective actions to remediate programmatic deficiencies.

The State agency's written comments appear in their entirety as Appendix G.

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<sup>23</sup> The New Mexico Health Care Authority was known as the New Mexico Human Services Department during our audit period.

<sup>24</sup> ABCB providers include PCS providers.



## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

Our audit covered consumer-delegated PCS Medicaid managed care claims and the qualifications of the attendants who provided those services during our audit period. We developed a sampling frame of 2,696,049 consumer-delegated PCS claims valued at greater than \$0, from which we selected a stratified random sample of 300 claims. (See Appendix D.)

We assessed the State agency's internal controls to satisfy the audit objective. In particular, we assessed the control activities related to the State agency's administration of the consumer-delegated PCS program; specifically, services provided by PCS attendants.

We conducted our audit work from December 2021 through May 2024.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements related to the Medicaid PCS program;
- interviewed State agency officials to gain an understanding of the Medicaid PCS program administered by the MCOs and the State agency's oversight responsibilities, and to determine whether the PCS providers associated with our four prior reports had changed ownership before our audit period;
- obtained and reviewed the contracts with the 3 MCOs with which the State agency contracted during our audit period to gain an understanding of the MCOs' oversight responsibilities for the PCS program;
- interviewed officials at MCOs to gain an understanding of the MCOs' oversight responsibilities for the PCS program;
- obtained MMIS data on encounter claims for consumer-delegated PCS provided during CY 2019 from the State agency;
- compared the MMIS consumer-delegated PCS encounter claims data with the Transformed Medicaid Statistical Information System's (T-MSIS) consumer-delegated PCS encounter claims data to determine whether the MMIS data was reliable;<sup>25</sup>

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<sup>25</sup> T-MSIS collects Medicaid and Children's Health Insurance Program (CHIP) data from States, Territories, and the District of Columbia into the largest national resource of enrollee information. These data are crucial for research and policy on Medicaid and CHIP and helping CMS conduct program oversight and administration.

- using the MMIS data, developed a sampling frame of 2,696,049 consumer-delegated PCS encounter claims;
- selected a stratified random sample of 300 claims from the sampling frame;
- contacted the PCS providers associated with the 300 sampled claims and sent a letter requesting documentation related to attendant qualifications;
- obtained and reviewed timekeeping records from the PCS providers associated with the 300 sampled claims to identify the attendants who rendered consumer-delegated PCS to Medicaid enrollees;
- identified 274 unique attendants for the 300 sampled claims;
- evaluated the documentation obtained for each sampled claim to determine whether the associated attendant(s) met Federal and State qualification requirements related to criminal background checks, abuse registry checks, TB testing, initial written competency testing, annual training, and CPR and first aid training for our audit period;
- followed up with PCS providers, when applicable, to discuss our review of the documentation provided and offered them opportunities to search for documentation that was not provided;
- determined the total number of attendant qualification deficiencies for Provider 1, Provider 2, and All Other New Mexico PCS Providers;
- used our sample results to estimate the number and percentage of claims for PCS provided by attendants whose qualifications did not meet Federal and State requirements (Appendix E); and
- discussed the results of our audit with State agency officials.

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: RELATED OFFICE OF INSPECTOR GENERAL REPORTS**

<b>Report Title</b>	<b>Report Number</b>	<b>Date Issued</b>
<i>Review of New Mexico Medicaid Personal Care Services Provided by Coordinated Home Health</i>	<a href="#"><u>A-06-09-00064</u></a>	9/11/2012
<i>Review of New Mexico Medicaid Personal Care Services Provided by Clovis Homecare, Inc.</i>	<a href="#"><u>A-06-09-00117</u></a>	6/15/2012
<i>Review of New Mexico Medicaid Personal Care Services Provided by Heritage Home Healthcare</i>	<a href="#"><u>A-06-09-00063</u></a>	5/15/2012
<i>Review of New Mexico Medicaid Personal Care Services Provided by Ambercare Home Health</i>	<a href="#"><u>A-06-09-00062</u></a>	3/12/2012

## APPENDIX C: FEDERAL AND STATE REQUIREMENTS

### FEDERAL REQUIREMENTS:

The Social Security Act § 1905(a)(24)(B) requires personal care services be provided by an individual who is qualified to provide such services.

42 CFR § 440.167(a)(2) requires personal care services be provided by an individual who is qualified to provide such services and who is not a member of the individual's family.

### STATE REQUIREMENTS:

NMAC 8.308.12.13(J)(3) requires PCS providers to comply with the requirements in the Manual.

NMAC 8.308.12.13(J)(10)(d) defines services provided by attendants who have not met the qualification requirements as non-covered services.

NMAC 7.1.9.8 requires, among other requirements, that a release-of-authorization form be submitted to undergo a criminal history screening, that attendants consent to a nationwide and statewide criminal history screening upon offer of employment, and that the provider maintain documentation relating to all employees evidencing compliance with this rule.

NM Statute § 27-7A-3 (2005) requires providers to document that they checked the abuse registry for each applicant being considered for employment prior to hiring.

NMAC 8.11.6.8 requires the provider, prior to hiring an attendant, to inquire whether the applicant is listed on the abuse registry, which would preclude employment.

State agency, *Managed Care Policy Manual* section 8.14 requires:

- providers and attendants to follow the New Mexico Department of Health and CDC guidelines for preventing the transmission of TB;
- attendants to pass an initial written competency test with a minimum score of 80 percent within the first 3 months of employment;
- providers to conduct or arrange for a minimum of 12 hours of annual training for attendants;
- attendants to obtain CPR certification with the first 3 months of employment and to maintain certification continually while providing PCS; and
- attendants to obtain first aid certification within the first 3 months of employment and to maintain certification continually while providing PCS.

## APPENDIX D: STATISTICAL SAMPLING METHODOLOGY

### SAMPLING FRAME

The sampling frame consisted of 2,696,049 New Mexico Medicaid managed care claims valued at greater than \$0 for PCS (provided by attendants and billed using procedure code T1019) for the consumer-delegated option provided during CY 2019. (See footnote 11.)

### SAMPLE UNIT

The sample unit was a Medicaid managed care claim.

### SAMPLE DESIGN AND SAMPLE SIZE

Our sample design was a stratified sample consisting of three strata, as shown in Table 2:

**Table 2: Division of Strata for Sample Design**

<b>Stratum</b>	<b>PCS Providers</b>	<b>Number of Frame Units</b>	<b>Sample Size</b>
1	Provider 1	125,026	100
2	Provider 2	179,424	100
3	All Other New Mexico PCS Providers	2,391,599	100
<b>Total</b>		<b>2,696,049</b>	<b>300</b>

### SOURCE OF RANDOM NUMBERS

We used the OIG/Office of Audit Services (OAS) statistical software to generate the random numbers.

### METHOD FOR SELECTING SAMPLE UNITS

For each stratum in the sampling frame, we sorted the items by transaction control number and line number and then consecutively numbered the items. After generating the random numbers for each of these strata, we selected the corresponding frame items for review.

### ESTIMATION METHODOLOGY

We used the OIG/OAS statistical software to estimate the total number and percentage of claims for consumer-delegated PCS in our sampling frame that were provided by attendants whose qualifications did not meet Federal and State requirements. We used this

software to calculate the point estimate and a two-sided 90-percent confidence interval for each estimate.

**APPENDIX E: SAMPLE RESULTS AND ESTIMATES**

**Table 3: Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications</b>
1	125,026	100	25
2	179,424	100	100
3	2,391,599	100	69
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>194</b>

**Table 4: Estimated Number and Percentage of Encounter Claims in the Sampling Frame for PCS Provided by Attendants With Deficient Qualifications  
(Limits Calculated at the 90-Percent Confidence Level)**

	<b>Number</b>	<b>Percent</b>
Point estimate	1,860,884	69.02%
Lower limit	1,677,815	62.23%
Upper limit	2,043,952	75.81%

**Sample Results and Estimates by Attendant Qualification Category**

**Table 5: Criminal Background Check Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications for Criminal Background Check</b>
1	125,026	100	0
2	179,424	100	9
3	2,391,599	100	25
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>34</b>

**Table 6: Abuse Registry Check Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications for Abuse Registry Check</b>
1	125,026	100	12
2	179,424	100	20
3	2,391,599	100	27
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>59</b>

**Table 7: Tuberculosis Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications for Tuberculosis Results</b>
1	125,026	100	3
2	179,424	100	8
3	2,391,599	100	25
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>36</b>

**Table 8: Initial Written Competency Test Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications for Competency Test</b>
1	125,026	100	2
2	179,424	100	100
3	2,391,599	100	17
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>119</b>



**Table 9: 12 Hours Training Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications for 12-Hours of Training</b>
1	125,026	100	9
2	179,424	100	68
3	2,391,599	100	46
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>123</b>

**Table 10: CPR Training Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications for CPR Training</b>
1	125,026	100	1
2	179,424	100	20
3	2,391,599	100	25
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>46</b>

**Table 11: First Aid Training Sample Results**

<b>Stratum</b>	<b>Frame Size</b>	<b>Sample Size</b>	<b>Number of Sampled Encounter Claims for PCS Provided by Attendants With Deficient Qualifications for First Aid Training</b>
1	125,026	100	2
2	179,424	100	21
3	2,391,599	100	35
<b>Total</b>	<b>2,696,049</b>	<b>300</b>	<b>58</b>

**Table 12: For Each Attendant Qualification Category, Estimated Number and Percentage of Encounter Claims in the Sampling Frame for PCS Provided by Attendants With Deficient Qualifications**

*(Limits Calculated at the 90-Percent Confidence Level)*

Attendant Qualification Category	Number			Percent		
	Point Estimate	Lower Limit	Upper Limit	Point Estimate	Lower Limit	Upper Limit
Criminal Background Check	614,048	442,643	785,453	22.78%	16.42%	29.13%
Abuse Registry Check	696,620	520,569	872,670	25.84%	19.31%	32.37%
Tuberculosis Results	616,004	444,585	787,424	22.85%	16.49%	29.21%
Competency Test	588,496	439,959	737,033	21.83%	16.32%	27.34%
12 Hours Training	1,233,396	1,035,778	1,431,014	45.75%	38.42%	53.08%
CPR Training	635,035	463,418	806,652	23.55%	17.19%	29.92%
First Aid Training	877,239	688,258	1,066,221	32.54%	25.53%	39.55%

**APPENDIX F: SAMPLED ITEM DEFICIENCIES**

**Provider 1**

<b>Sample Number*</b>	<b>CBC</b>	<b>Abuse Registry</b>	<b>TB Results</b>	<b>Competency Test</b>	<b>12-Hour Training</b>	<b>CPR</b>	<b>First Aid</b>	<b>No. of Deficiencies</b>	<b>Count<sup>†</sup></b>
6		X <sup>‡</sup>						1	1
8					X			1	2
16							X	1	3
19				X				1	4
22					X			1	5
23		X						1	6
27			X					1	7
28		X		X				2	8
37					X			1	9
41		X			X			2	10
42			X					1	11
43		X						1	12
45					X			1	13
47					X			1	14
53		X						1	15
56		X						1	16
62		X	X					2	17
63					X			1	18
70		X						1	19
76		X						1	20
85						X	X	2	21
90		X						1	22
96					X			1	23
97					X			1	24
100		X						1	25
<b>Total</b>	<b>0</b>	<b>12</b>	<b>3</b>	<b>2</b>	<b>9</b>	<b>1</b>	<b>2</b>	<b>29</b>	

\* We include the "Sample Number" column as a cross reference to the specific sample item.

† We include the "Count" column to show the number of claims with an error.

‡ The "X" indicates an error for the attendant qualification category.

**Provider 2**

Sample Number	CBC	Abuse Registry	TB Results	Competency Test	12-Hour Training	CPR	First Aid	No. of Deficiencies	Count
1				X	X			2	1
2			X	X	X			3	2
3				X	X			2	3
4		X		X	X			3	4
5				X	X			2	5
6				X	X			2	6
7				X	X			2	7
8				X	X			2	8
9				X	X	X	X	4	9
10				X	X			2	10
11				X				1	11
12				X	X			2	12
13			X	X				2	13
14				X	X	X	X	4	14
15	X		X	X	X	X	X	6	15
16		X		X				2	16
17				X	X			2	17
18		X		X				2	18
19				X	X	X	X	4	19
20				X	X			2	20
21				X		X	X	3	21
22				X	X	X	X	4	22
23				X	X	X	X	4	23
24				X	X			2	24
25				X				1	25
26				X				1	26
27				X				1	27
28				X	X			2	28
29	X	X	X	X	X	X	X	7	29
30				X		X	X	3	30
31			X	X				2	31
32				X	X			2	32
33		X		X		X	X	4	33
34				X	X			2	34
35				X	X			2	35
36	X	X		X				3	36
37				X	X			2	37
38	X	X		X				3	38
39				X				1	39

Sample Number	CBC	Abuse Registry	TB Results	Competency Test	12-Hour Training	CPR	First Aid	No. of Deficiencies	Count
40		X		X	X			3	40
41				X	X			2	41
42				X	X			2	42
43	X	X		X				3	43
44				X	X			2	44
45				X	X			2	45
46				X	X			2	46
47				X	X			2	47
48				X	X			2	48
49				X	X			2	49
50				X	X			2	50
51				X				1	51
52				X	X	X	X	4	52
53				X				1	53
54		X		X	X	X	X	5	54
55				X	X			2	55
56				X	X			2	56
57				X				1	57
58				X	X			2	58
59		X		X	X			3	59
60		X		X				2	60
61				X	X			2	61
62		X		X	X			3	62
63				X	X	X	X	4	63
64				X	X			2	64
65		X		X	X			3	65
66				X	X		X	3	66
67				X	X			2	67
68				X				1	68
69				X	X			2	69
70				X				1	70
71				X	X			2	71
72				X				1	72
73				X	X			2	73
74		X		X				2	74
75				X	X	X	X	4	75
76				X	X			2	76
77			X	X				2	77
78				X	X			2	78
79	X			X				2	79

Sample Number	CBC	Abuse Registry	TB Results	Competency Test	12-Hour Training	CPR	First Aid	No. of Deficiencies	Count
80				X				1	80
81				X	X	X	X	4	81
82				X	X			2	82
83				X				1	83
84				X	X			2	84
85				X	X			2	85
86				X				1	86
87		X		X	X	X	X	5	87
88	X	X		X				3	88
89		X		X	X			3	89
90				X	X			2	90
91	X	X	X	X	X	X	X	7	91
92	X			X				2	92
93				X	X	X	X	4	93
94				X	X			2	94
95				X	X			2	95
96				X				1	96
97				X	X			2	97
98		X		X				2	98
99			X	X	X	X	X	5	99
100				X	X	X	X	4	100
<b>Total</b>	<b>9</b>	<b>20</b>	<b>8</b>	<b>100</b>	<b>68</b>	<b>20</b>	<b>21</b>	<b>246</b>	

**All Other New Mexico PCS Providers**

Sample Number	CBC	Abuse Registry	TB Results	Competency Test	12-Hour Training	CPR	First Aid	No. of Deficiencies	Count
3	X	X	X	X	X	X	X	7	1
5			X	X	X	X	X	5	2
6		X						1	3
8			X					1	4
9		X	X		X			3	5
10			X					1	6
11	X				X	X	X	4	7
13	X		X		X			3	8
14		X						1	9
15	X	X	X		X	X	X	6	10
16			X					1	11
18			X	X	X	X	X	5	12
19	X	X		X	X			4	13
20						X	X	2	14
23		X			X			2	15
25			X					1	16
26	X				X	X	X	4	17
27					X			1	18
28				X				1	19
29					X			1	20
31	X	X	X	X	X	X	X	7	21
32	X	X			X			3	22
33						X	X	2	23
34	X				X			2	24
36	X	X	X	X	X			5	25
37					X		X	2	26
38					X			1	27
39		X			X		X	3	28
40					X			1	29
42	X				X			2	30
43				X				1	31
44		X			X	X	X	4	32
45					X	X	X	3	33
47	X	X	X	X	X	X	X	7	34
48			X		X	X	X	4	35
50					X		X	2	36
52					X		X	2	37
53		X			X			2	38
55	X		X	X	X		X	5	39

Sample Number	CBC	Abuse Registry	TB Results	Competency Test	12-Hour Training	CPR	First Aid	No. of Deficiencies	Count
56		X				X	X	3	40
57		X			X	X		3	41
58					X		X	2	42
59						X	X	2	43
62	X						X	2	44
63		X						1	45
64			X		X			2	46
65	X		X		X	X	X	5	47
66			X			X	X	3	48
68			X					1	49
70		X				X	X	3	50
72	X							1	51
73	X		X	X	X	X	X	6	52
76					X			1	53
77	X	X	X	X	X	X	X	7	54
79					X			1	55
81		X			X			2	56
82	X	X		X	X	X	X	6	57
83	X						X	1	58
84							X	1	59
88		X					X	2	60
89			X		X			2	61
91	X	X	X	X	X			5	62
92	X					X	X	3	63
93	X	X						2	64
94	X			X	X		X	4	65
96		X	X	X	X	X	X	6	66
97					X			1	67
98	X	X	X	X	X	X	X	7	68
99		X			X			2	69
<b>Total</b>	<b>25</b>	<b>27</b>	<b>25</b>	<b>17</b>	<b>46</b>	<b>25</b>	<b>35</b>	<b>200</b>	

Note: Total number of claims with 1 or more deficiencies for Provider 1 (25 claims), Provider 2 (100 claims), and All Other New Mexico PCS Providers (69 claims) = a total of 194 claims.



## APPENDIX G: STATE AGENCY COMMENTS



**Michelle Lujan Grisham, Governor**  
Kari Armijo, Secretary  
Alex Castillo Smith, Deputy Secretary  
Kathy Stater Huff, Deputy Secretary  
Kyra Ochoa, Deputy Secretary  
Dana Flannery, Medicaid Director

July 25, 2024

Patricia Wheeler  
Regional Inspector General  
Office of Audit Services, Region IV  
Office of Inspector General  
Department of Health and Human Services

Re: Department of Health and Human Services, Office of Inspector General Report A-06-22-02000  
– *New Mexico Did Not Ensure Attendants Were Qualified to Provide Personal Care Services, Putting Medicaid Enrollees at Risk.*

Dear Ms. Wheeler:

We are in receipt of your letter dated May 28, 2024, which included a draft report of the above referenced audit. The State agrees with the recommendations noted in your report. The following represents our response and corrective actions.

**Recommendation #1: Develop procedures to monitor PCS provider compliance with attendant qualifications, including those related to criminal background checks, abuse registry checks, TB tests, initial written competency tests, annual training, and CPR and first aid certifications.**

State Response: The State concurs with this recommendation. In October 2022, the State amended its managed care contracts to require that Managed Care Organizations (MCOs) perform annual audits of all contracted Agency-Based Community Benefit (ABCB) Providers. The focus of these annual audits is to ensure that employees hired and retained by the ABCB providers meet all state and federal requirements. The contract requires that the audits must be performed by the MCOs utilizing a tool that is approved by the State and cannot be delegated to ABCB providers. In order to reduce the administrative burden upon the network of ABCB providers, the contract also requires the MCOs to collaborate and conduct one shared audit of an ABCB provider per calendar year. Audit results are furnished to the State. Failure to comply with this requirement may result in a 2%-5% reduction in monthly capitation payments for each calendar day the MCO is out of compliance with this requirement.

**Recommendation #2: Educate providers more frequently through methods such as guidance letters or webinars to increase PCS providers' understanding of attendant qualification requirements.**

State Response: The State concurs with this recommendation. The State will pursue an amendment of its MCO Policy Manual to include a requirement that the MCOs collectively conduct a semi-annual webinar with contracted providers to include a review of PCS attendant qualifications. In addition,

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on an annual basis, the State will distribute a newsletter to all enrolled ABCB providers that highlights attendant qualifications as well as any potential penalties for failure to comply with these requirements.

**Recommendation #3: Take corrective action against providers that do not ensure that attendants comply with qualification requirements, which could include removing providers that repeatedly fail to comply from the State's PCS program.**

State Response: The state concurs with this recommendation. The State has recently made revisions to the Medicaid Managed Care Policy Manual which outlines the requirements of the ABCB providers. More specifically, ABCB providers who fail to maintain proper documentation for services rendered are subject to a recoupment of funds by the State for claims paid when audit findings are related to improper documentation. When considering to disenroll an ABCB provider who repeatedly fails to ensure that PCS attendant qualifications are met, the State will take into consideration the impact of disenrolling an ABCB provider upon the provider network as a whole, particularly due to the rural nature of the State. The State intends to utilize the audit results submitted by the MCOs to determine, on a case-by-case basis, whether the infractions of the ABCB provider would be cause for disenrollment from the Medicaid program while also ensuring that such action would not jeopardize members' access to care. The State may pursue other remedies, such as disallowing the PCS attendant to continue rendering services until such time that the ABCB provider can provide proof to the State that the PCS attendant meets all state and federal requirements. Should the State pursue the option of disallowing the PCS attendant to continue rendering services, then it will engage with the MCO and ABCB provider to offer technical assistance. Also, as mentioned above, the State will recoup any payments made for dates of service in which the PCS attendant did not meet all qualification requirements.

**Recommendation #4: Share the results of our audit report with PCS providers statewide to emphasize the importance of attendants meeting qualification requirements.**

State Response: The State concurs with this recommendation. As noted in the State's response to Recommendation #2, the State will include in its first newsletter distribution a copy of this audit report to demonstrate the significance of the PCS attendant qualification requirements and the current standings of non-compliance amongst ABCB providers.

**Recommendation #5: Clarify the oversight provisions in its contracts with MCOs to require MCOs to monitor PCS providers' compliance with attendant qualification requirements and report monitoring results to the State agency.**

State Response: The State concurs with this recommendation. As noted in the State's response to Recommendation #1, the State has added to its contracts the MCOs' responsibility to conduct annual audits of ABCB providers to ensure that PCS attendants meet all state and federal qualification requirements. Additionally, the State has modified its MCO contracts to include a requirement that each MCO develop an annual compliance plan and annual compliance evaluation targeted to test controls, identify areas of non-compliance and develop corrective actions to remediate programmatic deficiencies. The State will require that each MCO incorporate ABCB provider audits as a compliance initiative within their plan and submit an evaluation of the effectiveness of the corrective actions implemented based on the audits performed annually.

We greatly appreciate the professionalism of your review staff and the opportunity to respond.

Should you have questions, please contact Julie Lovato, Compliance Officer, at [julie.lovato@hca.nm.gov](mailto:julie.lovato@hca.nm.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Flannery', with a stylized flourish at the end.

Dana Flannery  
Medicaid Director

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