Questions for the Record from the Honorable Gus Bilirakis
Hearing entitled "Strengthening Medicaid Program Integrity and Closing Loopholes"
September 11, 2015
Medicaid and CHIP Payment and Access Commission

Q1: In your testimony you alluded to the Medicaid program in the territories having different rules for eligibility and payment than in the mainland. How are Medicaid programs in the territories different than in the 50 states?

A1: Medicaid programs in the five U.S. territories operate differently than in the 50 states and the District of Columbia. For the purposes of Medicaid and the State Children's Health Insurance Program (CHIP), territories are considered states unless otherwise indicated.[1] Specifically, their Medicaid programs are subject to annual limits on federal financial participation and have a statutorily imposed federal medical assistance percentage (FMAP).[2,3] Furthermore, federal statute excludes the territories from the following provisions:

- extending eligibility to poverty-related children and pregnant women,[4] and qualified Medicare beneficiaries;[5]
- facing repayments under Medicaid eligibility quality control;[6]
- facing limits in their ability to rely on provider taxes and donations;[7]
- receiving and paying funds to disproportionate share hospitals;[8]
- implementing spousal impoverishment protections when determining eligibility for nursing home services;[9]
- offering Transitional Medical Assistance;[10]
- paying the federal government based on the Medicare Part D clawback;[11] and
- implementing an asset verification program through financial institutions.[12]

Additionally, American Samoa and the Northern Mariana Islands are uniquely eligible for broad waivers under section 1902(j). This authority allows the Secretary of the U.S. Department of Health and Human Services (HHS) to exempt them from every federal Medicaid policy except for:

- the federal matching rate available to the territories;
- the capped grant amounts set for territories' Medicaid programs; and
- that payment can only be for services otherwise coverable by Medicaid.[13]

Puerto Rico, Guam, and the U.S. Virgin Islands, while ineligible for Section 1902(j) waivers, are additionally exempt from freedom of choice requirements.[14]

All five territories are permitted to establish income-based eligibility using local measures rather than the federal poverty level (FPL). For example, territories can participate in Medicaid expansion under the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) by expanding Medicaid to adults earning less than 133 percent of the local poverty level. The Centers for Medicare & Medicaid Services (CMS)

[1] §1101(a)(1) of the Social Security Act (the Act).
[2] §1108(f) of the Act.
[3] §1905 (b)(2) of the Act.
[4] §1902(l)(4)(B) of the Act.
[5] §1905(p)(4)(A) of the Act.
[6] §1903(u)(4) of the Act.
[7] §1903(w)(7)(D) of the Act.
[8] §1923(f)(9) of the Act.
[9] §1924(a)(4)(B) of the Act.
[10] §1925(c)(2) of the Act.
[11] §1935(e)(1)(A) of the Act.
[12] §1940(a)(4) of the Act.
[13] §1902(j) of the Act.
[14] §1902(a)(23) of the Act.

has approved state plan amendments (SPAs) incorporating these new eligibility groups for Puerto Rico, the U.S. Virgin Islands, and Guam.[15,16,17] As the only U.S. territory participating in the Supplemental Security Income (SSI) program, the Commonwealth of the Northern Mariana Islands extends Medicaid eligibility to all individuals receiving SSI cash payments, and to all individuals meeting up to 150 percent of SSI income and asset requirements.[18] American Samoa uses a presumed eligibility system in which CMS pays for Medicaid expenditures based on the estimated percentage of the population earning less than 200 percent of the local poverty level.[19]

Q2: Do the territories have the same reporting requirements that states have for their Medicaid program?

A2: Unless otherwise specified, territories are considered states for the purposes of Medicaid and CHIP and are subject to the same requirements.[20] Under rules promulgated by HHS for CHIP, the territories are not considered states for the purpose of required quarterly reporting of statistical and program expenditure CHIP data.[21] There is no comparable exemption under federal Medicaid regulations.

Q3: Are there other things that the territories should be providing to increase the level of transparency and accountability in their Medicaid programs?

A3: CMS recently added information on Medicaid enrollment, eligibility, waivers, and SPAs to the Medicaid website for American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. At the time of this hearing, Puerto Rico was the only territory for which this information was available. Data on expenditures are limited and information for Guam (with the exception of its SPAs) is not available on Medicaid.gov.

Q4: Under the ACA, the territories received a block grant of funds for usage in their Medicaid program.

Q4a: Does MACPAC know what these funds have been used for?

A4a: As you note, the territories are allotted fixed amounts of federal funding for their Medicaid programs. Territories routinely use the full amount of federal Medicaid funding available to them, presumably consistent with the requirements outlined in the Medicaid statute and regulations. MACPAC does not have an independent source of information to determine how the territories are using these funds.

Q4b: These funds were set to expire in 2019. It is believed that Puerto Rico will exhaust their funds before that date. Has MACPAC looked at the draw down rate for these funds and does MACPAC have any estimate on when these funds will be exhausted?

A4b: MACPAC has not analyzed territories' spending of their fixed allotments for Medicaid and thus cannot provide an estimate of when Puerto Rico might exhaust its funds.

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[15] Center for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2014. Attachment to Puerto Rico Medicaid State Plan. May 30, 2014. New York, NY: CMS. http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/PR/PR-14-002-MM1.pdf.

[16] Center for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2015. Attachment to the U.S. Virgin Islands State Plan. June 1, 2015. New York, NY: CMS. http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/VI/VI-15-0003.pdf.

[17] Center for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2014. Attachment to Guam State Plan. May 30, 2014. San Francisco, CA: CMS. http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/GU/GU-14-05-MM1.pdf.

[18] Center for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2015. Commonwealth of the Northern Mariana Islands. http://www.medicaid.gov/medicaid-chip-program-information/by-state/cnmi.html.

[19] Center for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services. 2015. American Samoa. http://www.medicaid.gov/medicaid-chip-program-information/by-state/American-Samoa.html.

[20] §1101(a)(1) of the Act.

[21] 42 CFR 457.740.

Q4c: What would happen when those funds are depleted, whether it happens in 2019 or an earlier date?

A4c: Once territories' Medicaid allotments have been depleted, territories would have to fund the difference from their own budgets. They could also make programmatic changes, such as restricting benefits or eligibility, to reduce their total spending on Medicaid.