COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

March 15, 2021

To: Subcommittee on Health Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "Averting a Crisis: Protecting Access to Health Care in the U.S. Territories"

On **Wednesday, March 17, 2021, at 1 p.m. (EDT)**, the Subcommittee on Health will hold a hearing entitled, "Averting a Crisis: Protecting Access to Health Care in the U.S. Territories."

I. MEDICAID IN THE U.S. TERRITORIES

A. Background

Each of the five U.S. territories – Puerto Rico, the U.S. Virgin Islands (USVI), the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, and Guam – operates a Medicaid program and a Children's Health Insurance Program (CHIP). Medicaid programs in the U.S. territories differ from Medicaid programs in the 50 states and the District of Columbia in several aspects. The most notable difference is the funding structure and the federal medical assistance percentage (FMAP). The territorial Medicaid programs receive capped funding from the federal government, as opposed to the open-ended funding structure of state Medicaid programs. Under this structure, the federal government provides matching funds to each territory for Medicaid expenditures up to a cap. Once a territory reaches its cap, no additional federal funds are available, and the territory must fund their programs using only territorial funds.[1] Territorial Medicaid programs also differ from states in terms of eligibility levels, covered benefits, and various requirements for ensuring program integrity.[2]

Section 1108 of the Social Security Act establishes funding levels for each of the territories that increase annually at the rate of the Consumer Price Index for all Urban Consumers

[1] Government Accountability Office, *Medicaid and CHIP: Increased Funding in U.S. Territories Merits Improved Program Integrity Efforts,* (Apr. 8, 2016) (www.gao.gov/products/GAO-16-324).

[2] MACPAC, *Medicaid and CHIP in the Territories* (February 2021) (www.macpac.gov/wp-content/uploads/2019/07/Medicaid-and-CHIP-in-the-Territories.pdf).

(CPI-U). The amount of funding provided under Section 1108 has historically not been sufficient to meet the needs of the territories' Medicaid programs.[3]

The territorial FMAP is set in statute at 55 percent. This is different from state Medicaid program FMAPs, which are based on a formula that takes into account the state's average per capita income. As a result, states with a lower per capita income have a higher FMAP, and accordingly, receive more federal funds relative to their spending than states with a higher per capita income.[4] If the territories' FMAP were calculated under the formula in statute for states, they would be near the statutory maximum of 83 percent.[5]

The benefit package that territories cover also generally differs from the benefits provided in state Medicaid programs.[6] Guam is currently the only territory to cover all 17 of the mandatory Medicaid benefits.[7] CNMI covers all but one mandatory benefit, and USVI covers all but two; while American Samoa and Puerto Rico cover ten of the mandatory benefits.[8] CNMI and American Samoa operate their programs under specific waiver authority available to these territories under Section 1902(j), which allows the Secretary of Health and Human Services (HHS) to waive most Medicaid statutory requirements. The other territories do not operate their programs under this waiver authority; however, the Centers for Medicare and Medicaid Services (CMS) has not required them to cover all mandatory Medicaid benefits. CMS has explained that taking compliance action against territories could put their federal funding at risk, and that certain services are unavailable in the territories.[9]

B. Temporary Funding Sources

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[3] *Id.*

[4] National Health Policy Forum, *Medicaid Financing: How the FMAP Formula Works and Why It Falls Short* (December 2008) (www.nhpf.org/library/issue-briefs/IB828_FMAP_12-11-08.pdf).

[5] *See* note 2.

[6] *Id.*

[7] Mandatory Medicaid benefits are Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services for individuals under 21; inpatient hospital services; laboratory and x-ray services; Medical or surgical services by a dentist; outpatient hospital services; physician services; tobacco cessation for pregnant women; family planning services; federally-qualified health center services; home health services for those entitled to nursing facility services; non-emergency medical transportation to medical care; certified pediatric and family nurse practitioner services; nurse midwife services; nursing facility services for individuals 21 and over; rural health clinic services; emergency services for certain legalized aliens and undocumented aliens; and freestanding birth center services.

[8] *See* note 1.

[9] *Id.*

Historically, territories have exceeded the funding provided by the statutory cap and FMAP for their Medicaid programs, resulting in insufficient health care for beneficiaries and tough fiscal decisions by local governments. In recent years, the Federal Government has had to step in on numerous occasions to provide temporary fiscal relief. This funding has also enabled the territories to strengthen their Medicaid programs and make important improvements to program integrity.[10]

Most recently, the Further Consolidated Appropriations Act, 2020 and the Families First Coronavirus Response Act (FFCRA) provided each of the territories with two years of significantly increased funding allotments and FMAP. The Further Consolidated Appropriations Act, 2020 increased allotments for fiscal year (FY) 2020 and FY 2021, expanded the FMAP for Puerto Rico to 76 percent, and for all other territories to 83 percent. The Further Consolidated Appropriations Act, 2020 also specified certain reporting and program integrity actions that each territory had to take to receive increased allotments and FMAP rates. FFCRA further increased the allotments and provided an additional 6.2 percentage points to the FMAP rates for the duration of the coronavirus disease of 2019 (COVID-19) public health emergency (PHE).[11] In FY 2021, the total annual Section 1108 allotment for all of the territories combined will be about $3.2 billion. Without the temporary increase, the total allotment would have been about $451 million per year.[12]

II. THE UPCOMING MEDICAID FISCAL CLIFF

A. Background

As indicated, recent legislation has provided the U.S. territories with significant additional funds and higher matching rates that has helped sustain their Medicaid programs. These additional funds, however, will expire at the end of September 2021. At that point, federal Medicaid funding for the territories will generally revert to the historical Section 1108 allotment. This will be a significant downward departure from the federal funding territories have received since the Affordable Care Act (ACA), and is sometimes referred to as the Medicaid cliff or the fiscal cliff. The expiration of the additional federal Medicaid funds is expected to have severe consequences for the territories, due to the significant funding shortfall. Furthermore, it would drastically reduce funds available for health care overall amid the COVID-19 pandemic. Without additional funding, the U.S. territories would likely have to drastically reduce benefits,

[10] For instance, the Affordable Care Act (ACA) provided additional funds to the territories, which expired on December 31, 2019. The Consolidated Appropriations Act 2017 provided Puerto Rico with nearly $300 million in additional Medicaid funds, and the Bipartisan Budget Act of 2018 (BBA) provided Puerto Rico and USVI with funds that were available until September 30, 2019. After a series of severe storms, the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (the Disaster Supplemental) provided CNMI with additional funds for the remainder of fiscal year (FY) 2019 and allowed American Samoa and Guam to draw down unexpended ACA funds after January 1, 2019.

[11] *See* note 2.

[12] *Id.*

eligibility, or provider payments.[13] Any and all of these options would very likely have serious implications for beneficiary access to health care throughout all of the territories.

B. Puerto Rico

The Further Consolidated Appropriations Act, 2020 and FFCRA provided Puerto Rico with $2.7 billion for FY 2020, $2.8 billion for FY 2021, an FMAP of 76 percent, and an additional 6.2 percentage points during the COVID-19 PHE. After these funds expire, Puerto Rico will only receive federal funds up to the Section 1108 cap – about $392.5 million – and would have to finance the remaining Medicaid expenditures with local funds. Puerto Rico lacks the funds to make up for the lost federal revenue and would likely be forced to cut provider reimbursement, in addition to other potential cuts to services and beneficiary eligibility.[14]

On December 20, 2020, Puerto Rico submitted their Contracting Reform Plan, as required by the Further Consolidated Appropriations Act, 2020. The plan outlines Puerto Rico's goal for more transparent procurement and contracting processes and an implementation strategy that focuses on qualitative and quantitative metrics.[15] Puerto Rico is currently developing plans to improve payment error rate measurement (PERM) requirements and Medicaid eligibility quality control (MEQC) requirements, which are due no later than June 20, 2021.[16] The law also subjected Puerto Rico to an investigation into Medicaid contracting practices by the Government Accountability Office (GAO), and a full Risk Assessment report by the HHS Office of the Inspector General (OIG).[17, 18]

C. U.S. Virgin Islands

The Further Consolidated Appropriations Act, 2020 and FFCRA provided USVI with $128.7 million for FY 2020, $127.9 million for FY 2021, an FMAP of 83 percent, and an additional 6.2 percentage points during the COVID-19 PHE. Without Congressional action,

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[13] *Id.*

[14] Letter from Governor Pedro R. Pierluisi, Office of the Governor of Puerto Rico, to Congressional leadership (March 5, 2021).

[15] Government of Puerto Rico, Office of the Governor, *Report in Response to PL 116-94: Further Consolidated Appropriations Act, 2020:(133 STAT 3105), Division N, Title 1 §202(a)(7)(A)(iii) Contracting Reform Plan* (December 20, 2020).

[16] Pub. L. No. 116-94

[17] Government Accountability Office, *CMS Needs to Implement Risk-Based Oversight of Puerto Rico's Procurement Process* (December 17, 2020) (GAO-21-229).

[18] Department of Health and Human Services, Office of the Inspector General, *Risk Assessment of Puerto Rico Medicaid Program* (A-02-20-01011).

USVI would have received approximately $18.8 million in FY 2020, $19.2 million in FY 2021, and an FMAP of 55 percent.[19]

The funding increases have allowed USVI to improve Medicaid services and provide health coverage to their most vulnerable populations. In FY 2020, USVI covered nearly 2,000 more enrollees. It is currently implementing a "Citizen's Portal" to fast-track eligibility determinations and enhance the ability of citizens to apply for coverage online. USVI saw a 70 percent increase in provider enrollment from October 2019 to September 2020. The increased funding allows USVI to provide timely payments, which has encouraged more providers to participate. More services are also now covered, such as telehealth, telemedicine, and coverage for Personal Care Attendants to provide in-home care to elderly and disabled patients. To comply with program integrity requirements in the Further Consolidated Appropriations Act, 2020, USVI designated an internal Program Integrity Lead for Medicaid fraud control activities that coordinates with the Medicaid Fraud Control Unit under the USVI Attorney General's office. The viability of the Medicaid program and further improvements is contingent on a long-term funding solution.[20]

D. Commonwealth of the Northern Mariana Islands

In 2019, CNMI exhausted its Medicaid funding in the wake of a powerful tropical cyclone. As a result, the territory's Medicaid program diverted Medicaid beneficiaries for all outpatient care to the Commonwealth Healthcare Corporation, the only safety net provider in the territory. CNMI was forced to cut reimbursements for private providers, many of which provide critical services not available through the public safety net provider. [21]

The Further Consolidated Appropriations Act, 2020 and the FFCRA provided CNMI with $63.1 million for FY 2020, $62.3 million for FY 2021, an FMAP of 83 percent, and an additional 6.2 percentage points during the COVID-19 PHE.[22] This allowed CNMI to cover approximately 16,000 people, over 30 percent of its population. The additional funding has been used respond to COVID-19, increase payments to public and private health care providers, cover additional benefits, and expand its provider network. CNMI has also designated a Program

[19] MACPAC, *Medicaid and CHIP in the U.S. Virgin Islands*, (Feb. 2021) (https://www.macpac.gov/wp-content/uploads/2018/02/Medicaid-and-CHIP-in-the-U.S.-Virgin-Islands.pdf).

[20] Virgin Islands Department of Human Services, Office of Commissioner Kimberley Causey-Gomez, *FY2020 Annual Medicaid Report* (October 29, 2020).

[21] Marianas Variety, *Starting June 1, NMI Medicaid will no longer reimburse private health providers*, (May 2019) (www.mvariety.com/cnmi/cnmi-news/local/112741-starting-june-1-nmi-medicaid-will-no-longer-reimburse-private-health-providers).

[22] *See* note 28.

Integrity Lead that coordinates with CMS to execute fraud control activities, bringing them in compliance with federal law.[23]

E. American Samoa

The Further Consolidated Appropriations Act, 2020 and the FFCRA provided American Samoa with $171.9 million in funding over FY 2020 and 2021 and an FMAP of 83 percent, plus an additional 6.2 percent during the COVID-19 PHE.[24] American Samoa's unique Medicaid program essentially covers everyone on the island, and is then reimbursed by the federal government based on the proportion of individuals with income below 200 percent of the federal poverty level (FPL).[25, 26] Accordingly, the Medicaid funding shortfalls in American Samoa can affect its entire population.

F. Guam

The Further Consolidated Appropriations Act, 2020 and the FFCRA provided Guam with $260.6 million in funding over FY 2020 and 2021 and an FMAP of 83 percent, plus an additional 6.2 percentage points during the COVD-19 PHE.[27] As a result, Guam was able to provide Medicaid coverage for 25 percent of its population and process more than 400,000 claims in FY 2020. The increased funding resulted in more payments to on-island providers, which cut costs to more expensive off-island providers. In FY 2021, Guam plans to strengthen benefits that cover out-patient physical therapy, non-emergency medical transportation, and increase reimbursement for dental, lab, and radiology services. Guam has also hired an additional Quality Control Reviewer to enhance program integrity.[28]

III. WITNESSES

Panel I

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[23] Commonwealth of the Northern Mariana Islands, Office of the Governor, *Report to Congress on the Impacts of U.S. Public Law 116-94 on the Medicaid Program of the Commonwealth of the Northern Mariana Islands*, (November 11, 2020).

[24] MACPAC, *Medicaid and CHIP in American Samoa,* (February 2021) (www.macpac.gov/wp-content/uploads/2019/06/Medicaid-and-CHIP-in-American-Samoa.pdf).

[25] *Id.*

[26] Letter from Sandra King Young, Medicaid Director, American Samoa Medicaid State Agency, to Rep. Raul M. Grijalva, Chairman, Committee on Natural Resources (June 6, 2019) (www.congress.gov/116/meeting/house/109536/witnesses/HHRG-116-II00-Wstate-KingYoungS-20190523-SD019.pdf).

[27] MACPAC, *Medicaid and CHIP in Guam,* (February 2021) (www.macpac.gov/wp-content/uploads/2019/06/Medicaid-and-CHIP-in-Guam.pdf).

[28] Office of the Governor of Guam, Department of Public Health and Social Services, *Guam Medicaid Program FY 2020 Annual Report*, (October 31, 2020).

Hon. Gregorio Kilili Camacho Sablan
Member of Congress, Commonwealth of the Northern Mariana Islands

Hon. Aumua Amata Coleman Radewagen
Member of Congress, American Samoa

Hon. Stacey E. Plaskett
Member of Congress, U.S Virgin Islands

Hon. Jenniffer González-Colón
Member of Congress, Puerto Rico

Hon. Michael F.Q. San Nicolas
Member of Congress, Guam

Panel II

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