

# Medicaid in Puerto Rico: Differences from the States

## I. Eligibility

In Puerto Rico, just under 50% of individuals live below the poverty line and receive health care coverage through the Medicaid program.<sup>1</sup> While the percentage of Puerto Ricans enrolled in Medicaid is already higher than in any state,<sup>2</sup> eligibility is determined based on the Puerto Rico Poverty Level (“PRPL”), rather than the federal poverty level (“FPL”) and is only 40% of the FPL.<sup>3</sup> Therefore, Puerto Ricans eligible for Medicaid are significantly poorer than individuals eligible for Medicaid in the states and a significantly larger share of the Puerto Rican population would be eligible for Medicaid if the FPL applied. For example, a family of four in Puerto Rico would be eligible for Medicaid only if its modified adjusted gross income was \$11,316 or lower, whereas a family of four in the states would be eligible if its modified adjust gross income was \$26,500 or lower.<sup>4</sup>

## II. Capped Federal Funding

The federal share of Puerto Rico’s Medicaid funding is capped and varies by year based on Congressional appropriation. The statutorily capped federal share leaves a significant gap compared to what the federal government would contribute to a State’s Medicaid program. In order to mitigate this funding shortfall, which in 2019 was \$2.433 billion, Congress has intermittently provided stopgap federal funding to help, generally related to broader national policy efforts or to help respond to specific crises in Puerto Rico.<sup>5</sup> One such example was in 2011 when the Affordable Care Act made \$5.4 billion available to the program between 2011 and 2019,<sup>6</sup> and most recently Congress increased Puerto Rico’s 2020 federal funding from \$375.1 million to \$2.7 billion and its 2021 federal funding from \$383.7 million to \$2.8 billion.<sup>7</sup> There has been no additional funding allocated past 2021, so under current law Puerto Rico will receive only \$392.5 million in 2022, producing an even larger funding gap than in 2019.<sup>8</sup>

## III. Incomplete Mandatory Benefits

According to a U.S. Government Accountability Office report, Puerto Rico is unable to offer 6 of the 15<sup>9</sup> mandatory Medicaid benefits required under the Social Security Act because existing

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<sup>1</sup> See Medicaid.gov, *Puerto Rico: Medicaid Overview*, available at <https://www.medicaid.gov/state-overviews/puerto-rico.html>.

<sup>2</sup> See Medicaid.gov, *Percentage of Population Enrolled in Medicaid or CHIP by State*, available at <https://www.medicaid.gov/state-overviews/scorecard/percentage-of-population-enrolled-medicaid-or-chip-state/index.html>; MACPAC, *Medicaid and CHIP in Puerto Rico*, p. 2 (Feb. 2021) available at <https://www.macpac.gov/wp-content/uploads/2020/08/Medicaid-and-CHIP-in-Puerto-Rico.pdf>.

<sup>3</sup> See MACPAC, *supra* note 2, at 1; Katie Perreira et al., *Environmental Scan of Puerto Rico’s Health Care Infrastructure*, p. 14, The Urban Institute (Jan. 2017) available at <https://www.urban.org/research/publication/environmental-scan-puerto-ricos-health-care-infrastructure/view/full-report>.

<sup>4</sup> See *id.*

<sup>5</sup> See *e.g.*, 42 U.S.C. 1308(g); P.L. 116-94 (“Further Consolidated Appropriations Act, 2020”); P.L. 116-94 (“Families First Coronavirus Response Act”).

<sup>6</sup> 42 U.S.C. 1308(g); see *id.*

<sup>7</sup> P.L. 116-94; P.L. 116-94; see MACPAC, *supra* note 2, at 3.

<sup>8</sup> See MACPAC, *supra* note 2, at 4.

<sup>9</sup> There is debate as to whether there are 15 or 17 mandatory Medicaid benefits. The two not included in the below chart are “medical or surgical services by a dentist” and “emergency services for certain legalized aliens and undocumented aliens.” Puerto Rico covers dental services but not emergency services for aliens. See U.S. Government Accountability Office, *Medicaid and CHIP: Increased Funding in U.S. Territories Merits Improved Program Integrity Efforts*, p. 12 (April 2016) available at <https://www.gao.gov/assets/gao-16-324.pdf>.

## Medicaid in Puerto Rico: Differences from the States

federal funding is insufficient to support a comprehensive program.<sup>10</sup> Mandatory benefits not covered in Puerto Rico include non-emergency medical transportation, nursing facility services, certified pediatric and family nurse practitioner services, nurse midwife services, nursing facility services for individuals aged 21 or older, freestanding birth center services, and emergency medical services for non-citizens.<sup>11</sup>

<b>Mandatory Benefits<sup>12</sup></b>	
Inpatient hospital services	Federally qualified health center services
Outpatient hospital services	Laboratory and X-ray services
EPSDT: Early and Periodic Screening, Diagnostic, and Treatment Services	Family planning services
Nursing Facility Services*	Nurse Midwife services*
Home health services*	Certified Pediatric and Family Nurse Practitioner services*
Physician services	Freestanding Birth Center services (when licensed or otherwise recognized by the state)*
Rural health clinic services	Non-Emergency Transportation to medical care*
Tobacco cessation counseling for pregnant women	* <i>Mandatory benefits not covered by Puerto Rico's Medicaid program</i>

#### **IV. The Lack of Medicare Cost-Sharing Assistance**

While Medicaid in Puerto Rico is able to provide Medicare Part A and B cost-sharing assistance to fully dual eligible members,<sup>13</sup> unlike the states, Puerto Rico is not required to, and does not, offer a Medicare Savings Program (“MSP”) to aid other elderly Medicare beneficiaries in affording premiums and cost-sharing.<sup>14</sup> The MSP provides premium and cost-sharing assistance to partial-benefit dual-eligible Medicare-Medicaid beneficiaries.<sup>15</sup> This cost-sharing assistance is crucial for low-income elderly Medicare beneficiaries to afford outpatient care because under traditional Medicare, beneficiaries’ out-of-pocket spending is not capped.<sup>16</sup>

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> S.S.A. § 1905(a); Medicaid.gov, *Mandatory & Optional Medicaid Benefits*, available at <https://www.medicaid.gov/medicaid/benefits/mandatory-optional-medicaid-benefits/index.html>.

<sup>13</sup> Dual eligible refers to beneficiaries who fully qualify for both Medicaid and Medicare. 45% of Medicare beneficiaries in Puerto Rico are dual eligible, compared with a national average of 18%. *See* Kaiser Family Foundation, *Dual Eligibles as a Percent of Total Medicare Beneficiaries (2019)* available at <https://www.kff.org/medicaid/state-indicator/duals-as-a-of-medicare-beneficiaries/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

<sup>14</sup> S.S.A. § 1905(p)(4)(A); *see* Puerto Rico State Plan, p. 23 (May 1993) available at [https://www.medicaid.pr.gov/pdf/stateplan/08\\_SPA\\_Attach1.pdf](https://www.medicaid.pr.gov/pdf/stateplan/08_SPA_Attach1.pdf); MACPAC, *supra* note 2, at 3.

<sup>15</sup> 42 U.S.C.A. § 1320b-14.

<sup>16</sup> *See* Laura Keohane et al., *Medicare Advantage Members’ Expected Out-Of-Pocket Spending For Inpatient and Skilled Nursing Facility Services*, 34 *Health Affairs* (2015) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4681704/#:~:text=Traditional%20Medicare%20does%20not%20offer,out%20of%20pocket%20expenses.&text=Additional%20programs%20protect%20low%20income,traditional%20Medicare%20and%20MA%20plans.>

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Further, unlike the states, residents of Puerto Rico are not automatically enrolled in Medicare Part B.<sup>17</sup>

### **V. No Prescription Drug Subsidy**

Unlike low-income seniors in the states, residents of Puerto Rico are not eligible for the Medicare Part D low-income subsidy (“LIS”).<sup>18</sup> The LIS, also known as “Extra Help”, is available to low-income Medicare beneficiaries with incomes up to 150% of the FPL and provides an approximate \$5,000 annual value to assist beneficiaries in affording prescription drugs.<sup>19</sup>

Instead of permitting Medicare beneficiaries in Puerto Rico to utilize the LIS, the Social Security Act creates a separate drug subsidy to the Puerto Rico Medicaid program called the Enhanced Allotment Program (“EAP”), which provides a more limited amount of funding to reduce prescription drug expenses for dual eligibles.<sup>20</sup> Federal EAP funds must be matched at Puerto Rico’s normal Medicaid matching rate, up to a defined cap.<sup>21</sup> While the EAP uses the same matching rate as Puerto Rico’s general federal match, EAP expenditures do not count toward the cap on general federal Medicaid dollars, and may only be used for prescription drug assistance.<sup>22</sup>

Puerto Rico’s EAP funding is between \$40-50 million annually, which is substantially less money per capita than would be allotted under the LIS available to the states.<sup>23</sup> Because EAP funding is provided based on a federal match, Puerto Rico often cannot afford to appropriate enough to receive the full match up to the EAP cap, and therefore does not utilize the entire pot of federal funding, in spite of its beneficiaries’ need for the subsidy money.<sup>24</sup>

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<sup>17</sup> S.S.A. § 1837(f).

<sup>18</sup> S.S.A. § 1860D-14(a)(3)(F); S.S.A. § 1935(e)(1)(A).

<sup>19</sup> See Social Security Administration, *Understanding the Extra Help with Your Medicare Prescription Drug Plan*, p. 1 (Feb. 2021) available at <https://www.ssa.gov/pubs/EN-05-10508.pdf>; 114<sup>th</sup> Congress, *Congressional Task Force on Economic Growth in Puerto Rico: Report to the House and Senate*, p. 26 (Dec. 2016) available at <https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Task%20Force%20on%20Economic%20Growth%20in%20Puerto%20Rico%20Releases%20Final%20Report.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> See *id.*

<sup>22</sup> S.S.A. § 1935(e)(1)(A).

<sup>23</sup> See 114<sup>th</sup> Congress, *supra* note 19, at 26.

<sup>24</sup> See *id.*