



441 G St. N.W.  
Washington, DC 20548

May 20, 2021

The Honorable Gus Bilirakis  
House of Representatives

Dear Representative Bilirakis,

This letter responds to your request that we address questions submitted for the record related to the March 17, 2021, hearing entitled *Averting a Crisis: Protecting Access to Health Care in the U.S. Territories*. GAO's responses to these questions are enclosed.

If you have any questions about this response or need additional information, please contact me at [YocomC@gao.gov](mailto:YocomC@gao.gov) or call (202) 512-4931.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Carolyn L. Yocom'.

Carolyn L. Yocom  
Director, Health Care

Enclosure

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON HEALTH  
“AVERTING A CRISIS: PROTECTING ACCESS TO HEALTH CARE IN THE U.S.  
TERRITORIES”**

**Wednesday, March 17, 2021**

**Questions for the Record**

**The Honorable Gus Bilirakis**

**Question 1:** HHS’s OIG determined in their December 2020 report that the risk of improper Medicaid payments made in Puerto Rico could be increased because CMS hasn’t provided a recent review of their Medicaid program in addition to not having the Medicaid Management Information System fully operational.

**a. To your knowledge, do these concerns persist?**

Other than our recent report and related testimony on the Medicaid procurement process in Puerto Rico, our prior work reviewing Puerto Rico Medicaid, including the potential for improper payments, predates the Department of Health and Human Services (HHS) Office of Inspector General’s December 2020 report. However, with regard to CMS review of Puerto Rico’s Medicaid program, GAO reported on a 2016 program integrity review that CMS was conducting in Puerto Rico. The focus of this review was to examine the territory’s oversight of the Medicaid program and to assess program integrity activities performed by managed care organizations (MCO).<sup>1</sup> The August 2016 review required Puerto Rico to submit a corrective action plan to address the review’s findings, which the territory did in September 2016. CMS has not completed a program integrity review in Puerto Rico since 2016.

With respect to the Medicaid Management Information System (MMIS), in January 2021, we reported that the completeness and accuracy of states’ Transformed Medicaid Statistical Information System (T-MSIS) data improved, but not all data were meeting applicable standards.<sup>2</sup> Two T-MSIS data sources—priority items and analytic files—showed similar trends for Puerto Rico. In certain areas, Puerto Rico’s T-MSIS data compares favorably with states in that it has successfully submitted data that CMS considers a top priority. In other areas—such as the ability to use 2016 T-MSIS data for research and analysis—Puerto Rico had not submitted sufficient data. Since our January 2021 report was issued, CMS data show that Puerto Rico has further improved the completeness and accuracy of T-MSIS data, the results of which can be found on CMS’s web site and on the CMS Data Quality (DQ) Atlas.<sup>3</sup>

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<sup>1</sup>HHS, Centers for Medicare & Medicaid Services, Center for Program Integrity. *Puerto Rico Focused Program Integrity Review Final Report*, (Baltimore, MD: August 2016).

<sup>2</sup>GAO, *Medicaid: Data Completeness and Accuracy Have Improved, Though Not All Standards Have Been Met*, GAO-21-196, (Washington, D.C.: Jan. 14, 2021).

<sup>3</sup>For additional information on CMS’s DQ Atlas, see <https://www.medicaid.gov/dq-atlas/welcome>.

- b. HHS’s OIG additionally mentioned in their report that as of July 2020, Puerto Rico’s Health Insurance Administration and Medicaid Fraud Control Unit were not coordinating program integrity efforts with the Medicaid Program Integrity Unit which would allow them to share information and define program integrity responsibilities. Additionally, Puerto Rico’s Health Insurance Administration delegated responsibility for provider oversight to the Managed Care Organizations without establishing procedures for monitoring the program integrity efforts of these Managed Care Organizations.**
  - o To your knowledge has Puerto Rico’s Health Insurance Administration taken meaningful steps to address this concern which, if left unaddressed, increases the risk of improper program payments?**

GAO has not examined coordination between ASES and Puerto Rico’s Medicaid Fraud Control Unit (MFCU). Our most recent related work predated the creation of Puerto Rico’s MFCU, where we recommended that CMS reexamine the agency’s program integrity strategy and develop a cost-effective approach to enhancing Medicaid program integrity in the territories, including requiring territories to establish a MFCU or working with them to obtain necessary exemptions or waivers from applicable program oversight requirements.<sup>4</sup> In November 2018, Puerto Rico applied for federal certification of a MFCU, which HHS certified in December 2018. Puerto Rico’s MFCU was staffed in January 2019. In an August 2020 report, the Puerto Rico Department of Justice reported that 41 cases of possible fraud had been referred to the MFCU, of which 16 remained open.<sup>5</sup>

- c. Did GAO observe procedures for reporting Medicaid overpayments on Form CMS-64 with Puerto Rico’s Medicaid Fraud Control Unit or Program Integrity Unit?**

The scope of recent GAO reviews of Puerto Rico’s Medicaid program has not included procedures for reporting overpayments on the Centers for Medicare & Medicaid Services (CMS) Form-64. We have previously reported that the limited detail on the types and volume of services provided in the territories can hinder program integrity efforts, including making it difficult to identify potential fraud, waste, and abuse. Moreover, because Puerto Rico’s Medicaid program is entirely managed care, the territory reports payments made to MCOs on the CMS Form-64 rather than report service-level expenditures. Under their contracts with ASES, the MCOs providing services to Medicaid beneficiaries in Puerto Rico are required to submit encounter data to ASES, which could provide insight on service-level utilization. However, in our prior work, CMS officials told us they do not collect or review these data on a regular basis.<sup>6</sup>

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<sup>4</sup>GAO, *Medicaid and CHIP: Increased Funding in U.S. Territories Merits Improved Program Integrity Efforts*, GAO-16-324, (Washington, D.C.: Apr. 8, 2016). Since this report was issued, the U.S. Virgin Islands also established a MFCU and the three remaining territories—American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam—obtained the necessary exemptions or waivers from CMS.

<sup>5</sup>Puerto Rico Department of Justice, *Informe de Logros del Departamento de Justicia 2017-2020*, (San Juan, Puerto Rico: August 31, 2020).

<sup>6</sup>See GAO-16-324.

**d. Does Puerto Rico and the territories have a sufficient level of trained staff with the institutional knowledge and skill necessary to effectively manage potential risk in the Medicaid program?**

GAO has not assessed the sufficiency of Medicaid program staff in the U.S. territories. Our prior work has shown that the territories are subject to a capped allotment and frequently have exhausted available federal Medicaid funds. We also found examples of program integrity efforts that CMS officials said the territories did not perform because funds spent on these efforts would reduce the amount of Medicaid funds available for services. Specifically, CMS officials said that the territories, other than Puerto Rico, had not established separate program integrity units because they lack adequate funding and personnel to do so. Medicaid funds spent on such oversight efforts would reduce the amount of funds available for the provision of health care services—that is, count against the Medicaid capped allotments for the territories.<sup>7</sup>

Regarding federal program oversight efforts, we also reported that CMS officials had assigned officials to the five territories to assist in program integrity efforts, and that their role was generally focused on providing technical assistance.<sup>8</sup> The activities of these officials varied across the territories, ranging from resolving complaints to more proactive efforts to identify trends indicating fraud, waste, and abuse.

**e. I understand that program funding in territories comes from a variety of funding streams. Is this patchwork of funding conducive to proper oversight or does it create challenges and if so, what are some of those challenges and how might this Committee address?**

GAO has previously reported that multiple funding streams can complicate program efficiency and effectiveness, but are not necessarily problematic in and of themselves.<sup>9</sup> Multiple federal programs, such as Medicare and Medicaid, as well as various HHS grant programs, fund health care services in the territories, as well as in all states. Our prior work found that Medicare was the single largest source of health care funding, representing over three-quarters of total funding in the territories.<sup>10</sup> Because Puerto Rico represents over 90 percent of the total territory population, we found that the aggregate spending numbers masked the often significant variation in the sources of funding among the territories. Specifically, while the proportion of federal spending by source in Puerto Rico largely mirrored the aggregate numbers, health care grant funding represented a much larger proportion of health care funding in the other four territories, largely due to their comparatively smaller Medicare populations. Various HHS agencies also distribute health care grants to the territories to support health care services and outreach programs.

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<sup>7</sup>See GAO-16-324. Although the FMAP for costs associated with establishing a MFCU is 90 percent for 3 years, any expenditures relating to the establishment and operation of a MFCU would count against the territories' capped Medicaid allotment.

<sup>8</sup>One CMS official was assigned program integrity responsibilities for American Samoa, Guam, and CNMI, and another CMS official was assigned such responsibilities in Puerto Rico and the U.S. Virgin Islands.

<sup>9</sup>See GAO, *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide* GAO-15-49SP (Washington, D.C.: Apr. 14, 2015).

<sup>10</sup>See GAO, *U.S. Insular Areas: Multiple Factors Affect Federal Health Care Funding*, GAO-06-75, (Washington, D.C.: Oct. 14, 2005). The Department of the Interior also funds health infrastructure and provides technical assistance to all territories but Puerto Rico.

Our prior work did not examine the oversight implications of this funding patchwork, although, as noted, this is not unique to the territories. However, our ongoing work examining the federal government's response to the COVID-19 pandemic has identified the potential for duplicate or overlapping payments in cases where federal funds are targeted to the same population. Specifically, COVID-19 funds are available through multiple agencies within HHS, as well as agencies outside of HHS, such as the Small Business Administration. In our September 2020 report, we found the potential for duplicate or erroneous payments for COVID-19 testing of uninsured individuals by the Health Resources and Services Administration (HRSA) and CMS, both within HHS. While HRSA and CMS have implemented controls, the potential for these duplicate payments continues to exist, underscoring the importance for continued federal and state oversight.<sup>11</sup>

**Question 2: Has the pandemic impacted the territories' ability to make meaningful progress towards implementation of program integrity requirements and, if so, how, and how might this Committee address those challenges?**

The Further Consolidated Appropriations Act, 2020 (Act) (P.L. 116-94), contained provisions to improve Medicaid program integrity in Puerto Rico including by directing Puerto Rico to publish a Contracting Reform Plan. While addressing the public health emergency posed by COVID-19 has been a top priority in the territories (as it is in the states), Puerto Rico has taken steps to address program integrity issues that were identified by the Act. Continued updates from Puerto Rico on these and other related efforts, as well as risk-based oversight of Puerto Rico's procurement process by CMS, as we recommended in our February 2021 report, could help ensure that these efforts continue and help inform Committee efforts to address program integrity challenges.

In December 2020, Puerto Rico issued a Contracting Reform Plan in response to the requirements set forth in the Act. In its April 2021 semi-annual report to Congress, Puerto Rico reported making progress toward implementing certain of these contract reforms by establishing a threshold to require competitive procurement methods for all Medicaid-funded professional services contracts over \$150,000, formalizing the process for responding to contracting document requests from CMS, and building a contract document inventory. These reported activities may address concerns raised in our February 2021 report about the absence of important steps to promote competition in Puerto Rico's Medicaid procurements that we reviewed.<sup>12</sup> Puerto Rico also reported making progress on other program integrity efforts including establishing and appointing a lead to the Program Integrity Unit and improving enrollment verification with employer verification and Public Assistance Reporting Info System checks.

In addition, in response to COVID-19, CMS has made widespread use of program waivers and other flexibilities to expand the availability of Medicare and Medicaid services, maintain access for beneficiaries, and give providers more flexibility in treating beneficiaries. These waivers have allowed states and territories to relax certain program integrity activities related to providers—including licensing requirements, criminal background checks, and site visits—which poses

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<sup>11</sup>GAO, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions*, GAO-20-701, (Washington, D.C.: Sept. 21, 2020).

<sup>12</sup>GAO, *Medicaid: CMS Needs to Implement Risk-Based Oversight of Puerto Rico's Procurement Process*, GAO-21-229, (Washington, D.C.: Feb. 5, 2021).

program integrity risks. Many of these waivers are scheduled to end after the COVID-19 public health emergency expires, but stakeholders have expressed interest in making some waivers permanent. The ongoing program integrity risks associated with these waivers indicate the need for appropriate CMS oversight. In addition, CMS's January 2021 Pandemic Plan outlines that CMS should evaluate the impact of waivers used to respond to a pandemic to inform planning for future emergencies. Such an assessment could help identify leading practices and implementation challenges to be addressed by states, CMS, and Congress.