



Testimony

Before the Subcommittee on Health,
Committee on Energy and Commerce,
House of Representatives

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PUERTO RICO

Efforts to Improve Competition for Medicaid Procurement

Statement of Carolyn L. Yocom, Director
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Madam Chairwoman Eshoo, Ranking Member Guthrie, and Members of the Subcommittee:

Thank you for the opportunity to discuss the Medicaid program in Puerto Rico. Among the U.S. territories, Puerto Rico administers the largest Medicaid program, covering over 1 million beneficiaries at a total cost of \$2.5 billion in 2018.¹ Like other states and territories, Puerto Rico implements major functions of its Medicaid program by procuring a variety of administrative and other services from contractors. In calendar year 2018, states and territories paid contractors at least half of the \$619 billion in total Medicaid expenditures. In that same year, Puerto Rico paid contractors at least 96 percent (\$2.4 billion) of its \$2.5 billion in total Medicaid expenditures, primarily to managed care organizations (MCO) for coverage of Medicaid services.²

States' and U.S. territories' Medicaid procurement processes can directly affect their efficient operation of the program and their ability to prevent fraud, waste, and abuse.³ By promoting competition for procurements, states and territories can select contractors that provide the greatest value to their Medicaid programs. Competition also reduces the risk of fraud, waste, and abuse that—if unabated—could increase procurement costs and reduce funding available for Medicaid services to individuals.

In April 2016, we found little assurance that Puerto Rico and other territories' Medicaid funds were protected from fraud, waste, and abuse.⁴ Since then, the Centers for Medicare & Medicaid Services (CMS)—the federal agency in the Department of Health and Human Services (HHS)

¹Five territories of the United States participate in the Medicaid program: American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

²Under managed care, states and territories typically procure from MCOs a specific set of Medicaid-covered services for Medicaid beneficiaries in return for a set payment per beneficiary, referred to as a capitated rate.

³The term procurement in this report refers specifically to the process of obtaining goods or services via government contract. Each state and territory must provide a Medicaid state plan that describes how it will administer its program according to methods that the Secretary of the Department of Health and Human Services finds to be necessary for the program's proper and efficient operation. 42 U.S.C. § 1396a(a)(4)(A).

⁴See GAO, *Medicaid and CHIP: Increased Funding in U.S. Territories Merits Improved Program Integrity Efforts*, [GAO-16-324](#) (Washington, D.C.: Apr. 8, 2016).

that oversees Medicaid—and Puerto Rico have taken some steps to improve program oversight.

However, in July 2019, the Department of Justice indicted three individuals, including the former executive director of Puerto Rico’s Administración de Seguros de Salud, which oversees the territory’s procurements for Medicaid managed care services, for unlawfully steering Medicaid contracts to certain individuals.⁵ These indictments have raised questions about Puerto Rico’s Medicaid procurement process, including whether it helps ensure appropriate competition. In light of these and other questions, the Further Consolidated Appropriations Act, 2020, directs Puerto Rico to publish a Medicaid procurement reform plan to combat fraud, waste, and abuse.⁶ Puerto Rico provided Congress with this plan on December 18, 2020.

My testimony today will summarize our February 2021 report on CMS’s oversight of Puerto Rico’s Medicaid procurement process, including the extent to which this process helps ensure competition.⁷ This testimony will focus on our findings from the report as they relate to Puerto Rico’s Medicaid procurement reform plan.

To conduct the work on which this statement is based, we reviewed relevant federal regulations and CMS guidance, interviewed officials from CMS and Puerto Rico, reviewed documentation of the process used to make eight Puerto Rico procurements (three competitive and five noncompetitive) that were in effect as of April 1, 2020, and reviewed Puerto Rico’s procurement reform plan. Additional information on our scope and methodology is available in our report. Our work was performed in accordance with generally accepted government auditing standards.

⁵U.S. Department of Justice, *Former Secretary Of Puerto Rico Department Of Education And Former Executive Director Of Puerto Rico Health Insurance Administration Indicted With Four Others For Conspiracy, Wire Fraud, Theft Of Government Funds, And Money Laundering* (San Juan, Puerto Rico: July 10, 2019), accessed November 20, 2020, <https://www.justice.gov/usao-pr/pr/former-secretary-puerto-rico-department-education-and-former-executive-director-puerto-1>.

⁶Pub. L. No. 116-94, div. N, § 202(a)(2), 133 Stat. 2534, 3105 (2019) (codified at 42 U.S.C. § 1308(g)(7)(A)(iii)).

⁷See GAO, *Medicaid: CMS Needs to Implement Risk-Based Oversight of Puerto Rico’s Procurement Process Medicaid*, [GAO-21-229](#) (Washington, D.C.: Feb. 5, 2021).

Background

Notable differences exist in the funding and operation of Puerto Rico's Medicaid program as compared with the states.⁸ Similar to states, the federal government and Puerto Rico jointly fund Medicaid to provide health care coverage for low-income and medically needy populations. However, federal law has historically established the federal matching rate for Medicaid expenditures in Puerto Rico at the lowest rate available to states, while matching rates for the states are determined each year based on a formula that takes into account variations in their per capita incomes. In addition, unlike states that receive open-ended federal matching funds, Puerto Rico can access federal funds for Medicaid up to an annual limit. Roughly 40 percent of Puerto Rico's population qualifies for Medicaid, and over the past decade, Congress has provided Puerto Rico with increased federal Medicaid funding.⁹

Similarly, as is the case with states, Puerto Rico's Medicaid program is required to cover certain benefits—known as mandatory Medicaid benefits. However, CMS has not always enforced this program requirement in Puerto Rico. For example, in April 2016, we found that Puerto Rico did not cover seven of the 17 mandatory Medicaid benefits, including nursing facility services and home health services.¹⁰

With respect to Medicaid procurement, HHS regulations apply to both states and Puerto Rico. Specifically, HHS regulations generally require a state or territory to “follow the same policies and procedures it uses for procurements from its non-federal funds.”¹¹ In addition, under HHS regulations, the agency may require a state or territory to comply with federal competition standards that apply to other non-federal entities under limited circumstances, such as when the agency determines that the state's or territory's procurement process for certain procurements is

⁸The differences in Medicaid funding and operation outlined in this section also generally apply to the other four U.S. territories participating in the program.

⁹Most recently, for fiscal years 2020 and 2021, Congress provided additional federal funding for all territories. See Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, div. N, § 202, 133 Stat. 2534, 3103 (2019); Families First Coronavirus Response Act, Pub. L. No. 116-127, § 6009, 134 Stat. 178, 209 (2020)

¹⁰See [GAO-16-324](#).

¹¹See 45 C.F.R. § 75.326 (2019). States and territories must also follow federal requirements regarding the procurement of recovered materials and include certain contract provisions in every purchase order or other contract. See 45 C.F.R. §§ 75.331, 75.335 (2019). According to CMS officials, states and territories must attest in their Medicaid state plans to complying with this requirement.

an impediment to competition that could substantially impact project cost or the risk of failure.¹²

Puerto Rico's Procurement Reform Plan Acknowledges the Need to Improve Competition and Outlines Future Initiatives

In the Medicaid procurement reform plan it provided Congress in December 2020, Puerto Rico outlines initial steps to improve competition. In particular, Puerto Rico identifies a guiding principle and area of opportunity related to competition, as well as initiatives to define policies and actions it will use to increase competition. Puerto Rico's plan also notes that agreement from CMS is needed to implement reforms.

For our February 2021 report, we reviewed federal procurement standards that address competitive and noncompetitive procurements. Although states and territories are generally not required to meet these federal procurement standards, these standards were designed to promote competition, which we and other organizations have found to be a cornerstone of procurement. In addition, we previously found that competition can reduce costs, improve contractor performance, curb fraud, and promote accountability.¹³

Competitive procurements. In its procurement reform plan, Puerto Rico states that by April 2021 it will identify procurement information it will make public as part of its competitive procurement process and will make such information public by the end of 2021. Puerto Rico also plans to define criteria for evaluating proposals submitted by potential contractors. However, Puerto Rico's procurement reform plan does not specify whether it will make these criteria public when it issues requests for proposals.

Including such information may promote fair competition and improve agencies' efforts to obtain proposals that are as responsive as possible to their needs. Requests for proposals for two of the three competitive procurements we reviewed did not include certain information on factors

¹² These additional federal procurement standards apply to other non-federal entities, such as local governments, Indian tribes, and nonprofit organizations that participate in the Medicaid program. HHS may require states and territories to follow federal competition standards for two types of procurements: (1) information systems that support Medicaid programs, known as administrative data processing equipment and services; and (2) services from external quality review organizations for an annual review of the quality, timeliness, and access to health care services provided by states' MCOs. See 45 C.F.R. § 95.613(a) (2019); 42 C.F.R. § 438.356(e) (2019).

¹³ See GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, [GAO-10-833](#) (Washington, D.C.: July 26, 2010).

used to evaluate proposals and make awards, although the largest procurement we reviewed included this information.

Noncompetitive procurements. In its procurement reform plan, Puerto Rico also states that by August 2021, it will identify the circumstances under which the use of noncompetitive contracts is justified, as well as the factors it might consider in making this determination, such as the length of the contract. None of the five noncompetitive procurements we reviewed included documentation of justifications established by federal procurement standards—such as emergencies—which HHS may require a state or territory to comply with under limited circumstances.¹⁴

CMS oversight. As we reported in February 2021, CMS has not overseen Puerto Rico’s compliance with the federal requirement that the territory follow the same policies and procedures that it uses for procurements using non-federal funds. According to CMS officials, Puerto Rico is in the best position to ensure compliance with its respective procurement laws. CMS officials stated that the agency has treated Puerto Rico the same as states and other U.S. territories, as CMS has not overseen the Medicaid procurement process in any state or territory.

States and territories must attest to compliance with this federal procurement requirement in their state plan. CMS officials said that they review these attestations when states or territories submit changes to the relevant portion of their state plans, but this occurs infrequently and CMS does not proactively initiate this process. As of October 2020, CMS last reviewed the relevant portion of Puerto Rico’s state plan in 2004. CMS officials also told us that the agency has discretion in determining when it can exercise oversight of a state’s or territory’s compliance with federal procurement requirements; however, the agency does not have documented procedures specifying the circumstances under which it would take such oversight actions.

In our February 2021 report, we recommended CMS take steps to implement ongoing, risk-based oversight of Puerto Rico’s Medicaid procurement process. Implementing this recommendation can help CMS meet its statutory requirement to ensure that Puerto Rico administers its

¹⁴These federal procurement standards allow noncompetitive procurements only under limited circumstances, including when (1) the item is available only from a single source; (2) an emergency does not provide sufficient time to conduct a competitive procurement; (3) CMS expressly authorizes noncompetitive procurement; or (4) after solicitation of a number of sources, competition is determined to be inadequate.

Medicaid program using methods that ensure the efficient operation of the program. HHS concurred with this recommendation, and stated that CMS is reviewing Puerto Rico's procurement reform plan against applicable requirements.

As Puerto Rico continues to develop and carry out its planned reforms, implementing our recommendation for ongoing, risk-based oversight of Puerto Rico's Medicaid procurement process could enable CMS to promote competition and efficiency, while preventing fraud, waste, and abuse in the program.

Madam Chairwoman Eshoo, Ranking Member Guthrie, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Carolyn L. Yocom, Director, Health Care at (202) 512-7114 or yocomc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Susan Anthony, (Assistant Director), Russell Voth, (Analyst-in-Charge), Kelly Krinn, Drew Long, and Jennifer Whitworth.

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