COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

June 17, 2019

To: Subcommittee on Health Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "Strengthening Health Care in the U.S. Territories for Today and Into the Future"

On **Thursday, June 20, 2019, at 10:30 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Health will hold a hearing entitled, "Strengthening Health Care in the U.S. Territories for Today and Into the Future."

I. MEDICAID IN THE TERRITORIES

A. Background

Each of the five U.S. territories – Puerto Rico, the U.S. Virgin Islands (USVI), Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI) – operates a Medicaid program and a Children's Health Insurance Program (CHIP). Medicaid programs in the 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 (the matching rate, or FMAP). 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, however, 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* (March 2019) (www.macpac.gov/wp-content/uploads/2019/03/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 10 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 (the Secretary) to waive most Medicaid statutory requirements, other than the matching rate and capped allotment. 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 the mandatory Medicaid benefits. CMS has explained that taking compliance action against Puerto Rico would put its federal funding at risk, and that certain services are unavailable in Puerto Rico.[9]

---

[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.*

B. Temporary Funding Sources

Section 2005 and Section 1323 of the Affordable Care Act (ACA) provided additional funds to the territories. Section 2005 funds are the larger of the two ACA funding provisions, with funding available for the territories until September 30, 2019. Section 1323 funds are only available to a territory after it exhausts its Section 2005 funds, and these funds expire on December 31, 2019.[10]

The Consolidated Appropriations Act of 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 can be drawn down until September 30, 2019. The BBA funds have an FMAP of 100 percent, meaning Puerto Rico and USVI do not need to provide territorial funds in order to draw them down.[11]

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.[12] It further allowed American Samoa and Guam to draw down their Section 1323 funds at an FMAP of 100 percent for expenditures after January 1, 2019. CMS requires territories to exhaust their Section 1108 funds prior to drawing down their Section 1323 funds, but this is not required by statute.[13] Under current projections, some of the territories are not expected to exhaust all of their Section 1323 funds prior to the December 31, 2019 expiration date.[14]

C. The Medicaid Fiscal Cliff

As indicated above, the ACA, BBA, and the Disaster Supplemental provided the territories with significant additional funds and in some cases, higher matching rates that helped sustain their Medicaid programs. The majority of these additional funds, however, will expire at the end of September 2019. 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 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 it will create. It is unclear how territories will adjust to these funding shortfalls,

---

[10] *See* note 2.

[11] Kaiser Family Foundation, *Medicaid Financing Cliff: Implications for the Health Care Systems in Puerto Rico and USVI* (May 2019) (www.kff.org/report-section/medicaid-financing-cliff-implications-for-the-health-care-systems-in-puerto-rico-and-usvi-issue-brief/).

[12] P.L. 116-20.

[13] MACPAC, *When Will the U.S. Territories Exhaust Federal Medicaid Funding?* (May 2019) (www.macpac.gov/wp-content/uploads/2019/05/When-will-the-territories-exhaust-federal-Medicaid-funding.pdf).

[14] *Id.*

but it is likely that they would reduce benefits, eligibility, or provider payments.[15] All of these options would likely have serious implications for beneficiary access to health care.

Puerto Rico

The ACA funds have comprised a significant share of the Medicaid funds for Puerto Rico and USVI.[16] The ACA provided Puerto Rico $6.3 billion in federal funds for the Medicaid program. The BBA provided Puerto Rico with an additional $4.8 billion at 100 percent matching rate. These funds will expire at the end of September 2019, at which point the FMAP will revert to 55 percent.[17] After these funds expire, Puerto Rico will only receive federal funds up to the Section 1108 cap and would have to finance the remaining Medicaid expenditures with local funds. Based on estimates by the Kaiser Family Foundation, Puerto Rico could experience a shortfall of $1 billion in FY 2020 and $1.5 billion in FY 2021.[18] MACPAC estimates that Puerto Rico will exhaust its federal Medicaid funds for FY 2020 between December 2019 and March 2020.[19] Puerto Rico lacks the funds to make up for the lost federal revenue. The Governor's fiscal plan calls for significant cuts to the Medicaid program. MACPAC estimates that one-third to one-half of current enrollees could lose coverage if no additional federal funds are made available.[20]

USVI

The ACA provided USVI with $298.7 million in federal funds for the Medicaid program.[21] BBA also provided USVI with an additional $106.9 million at 100 percent FMAP.[22] However, these funds will expire at the end of FY 2019. Without additional federal funding, USVI will experience an over $30 million in shortfall in FY 2020, approximately 40 percent of the territory's Medicaid program costs.[23] MACPAC estimates that USVI will exhaust its federal

---

[15] *Id.*

[16] *See* note 10.

[17] *Id.*

[18] *Id.*

[19] *See* note 12.

[20] MACPAC, *Medicaid in Puerto Rico and Spending Data Analysis and Projections*, (March 2019) (www.macpac.gov/publication/medicaid-in-puerto-rico-financing-and-spending-data-analysis-and-projections/).

[21] MACPAC, *Medicaid and CHIP in the U.S. Virgin Islands*, (February 2018) (www.macpac.gov/publication/medicaid-and-chip-in-the-u-s-virgin-islands/).

[22] *Id.*

[23] *Id.*

Medicaid funding between January and June of 2020.[24] Based on independent estimates, approximately 18,000 enrollees or more could lose access to coverage.[25]

CNMI

The ACA provided CNMI with $109.2 million in additional federal funds through Section 2005 and Section 1323.[26] However, CNMI has already exhausted its ACA funds, and in March 2019, announced that it had exhausted all other sources of federal and local funds for the Medicaid program.[27] As a result, the territory's Medicaid program has diverted Medicaid beneficiaries for all outpatient care to the Commonwealth Healthcare Corporation, the only safety net provider in the territory. MACPAC is updating its projections for when CNMI will exhaust its federal Medicaid funds to include the additional funds included in the Disaster Supplemental.

Guam and American Samoa

Guam and American Samoa have sufficient federal funds remaining from the ACA but are unable to generate the non-federal share required to draw down federal funds – known as the match. The ACA provided American Samoa with $197.8 million in federal funds. As of May 2019, American Samoa had used $45.5 million of its total ACA funds, and still has $152.3 million in federal funds remaining.[28] American Samoa is also struggling to fund its only medical center that provides care for three quarters of the territory's residents, all of whom are enrolled in Medicaid. For Guam, MACPAC projects that for FY 2020 approximately $27.9 million of Section 2005 funds will expire unspent, and $24.4 million of Section 1323 funds will remain available.[29] The Disaster Supplemental authorized an FMAP of 100 percent for these funds for FY 2019, which will help American Samoa and Guam draw down the remaining funds. MACPAC is updating its projections for when Guam and American Samoa will exhaust their federal Medicaid funds to include the additional funds from the Disaster Supplemental.

---

[24] *See* note 12.

[25] *See* note 10.

[26] MACPAC, *Medicaid and CHIP in the Commonwealth of the Northern Mariana Islands*, (March 2019) (www.macpac.gov/publication/medicaid-and-chip-in-the-commonwealth-of-the-northern-mariana-islands).

[27] 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).

[28] House Committee on National Resources, Testimony of Sandra King Young, Medicaid Director, American Samoa, 116th. Cong. (May 23, 2019).

[29] *See* note 12.

II. WITNESSES

Anne Schwartz, Ph.D.
Executive Director
Medicaid and CHIP Payment and Access Commission

Angela Avila
Executive Director, Administración de Seguros de Salud de Puerto Rico
Puerto Rico Health Insurance Administration

Sandra King Young
Medicaid Director
American Samoa State Agency

Maria Theresa Arcangel
Chief Administrator
Guam Division of Public Welfare

Michal Rhymer-Browne
Assistant Commissioner
Department of Human Services, U.S. Virgin Islands

Helen C. Sablan
Medicaid Director
Commonwealth of the Northern Mariana Islands State Medicaid Agency