

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

July 17, 2019

## **Via Electronic Transmission**

The Honorable Alex M. Azar, II  
Secretary  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Azar,

Allegations of widespread corruption in Puerto Rico have surfaced recently, with the Justice Department announcing arrests and criminal charges on July 10 against former Puerto Rico agency officials. One of those officials is the former executive director of the Puerto Rico Health Insurance Administration (PRIHA, also known as Administracion de Seguros Salud de Puerto Rico (ASES)), who has been accused of conspiracy to commit an offense against the United States by channeling millions of dollars of federal contracts to politically favored entities. PRIHA implements and administers Puerto Rico's island-wide health insurance system, which includes federal funds provided to Puerto Rico for its Medicaid program.

The recent and unfortunate allegations concerning misuse of public funds in Puerto Rico's health system, along with an ongoing lack of transparency in the government of Puerto Rico, raises important questions as Congress once again faces decisions on federal Medicaid funding for Puerto Rico.

As you know, federal financing for territorial Medicaid programs is capped. Territories have access to federal funds only up to an annual ceiling known as the Section 1108 allotment (Sec. 1108(g) of the Social Security Act). And, the federal medical assistance percentage (FMAP) for territories is set at 55% (Sec. 1905(b) of the Social Security Act).

However, Congress has recently provided temporary increases to territories above their Section 1108 allotment. Those supplemental funds began with the 2010 Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended).

The ACA, and implementing rules and regulations which varied over time during the Obama administration, have repeatedly caused uncertainty and harm to U.S. territories.<sup>1</sup> Included in those harms is the fact that the ACA set up a well-known funding cliff for the territories, which has led to uncertainty about federal funding flows to the territories for their Medicaid programs. Once again, Congress is facing a need to consider levels of Medicaid funding for the territories, with Puerto Rico representing the largest share of the funding.

The ACA provided for a one-time increase in Medicaid funding for the territories of \$7.3 billion, of which Puerto Rico received \$6.4 billion. The ACA also permanently increased the territories' statutory FMAP rate from 50 percent to 55 percent.

There are, of course, difficulties in assessing "equitable" Medicaid funding for Puerto Rico, including the fact that while Medicaid is funded out of the general fund of the United States, individuals in Puerto Rico do not participate in the federal personal income tax system, which helps finance the general fund.

Another difficulty, is lack of information on why \$6.4 billion was the amount chosen by the authors of the ACA for additional funding for Puerto Rico over a limited time period. We are not aware of any rationale behind selecting that amount of funding, or the time period over which the funds were made available. Lacking such information, it is not clear that maintenance of growth rates and amounts of Medicaid funding used by Puerto Rico from the \$6.4 billion time-limited balance since July 2011 is in any sense optimal, equitable, or reasoned.

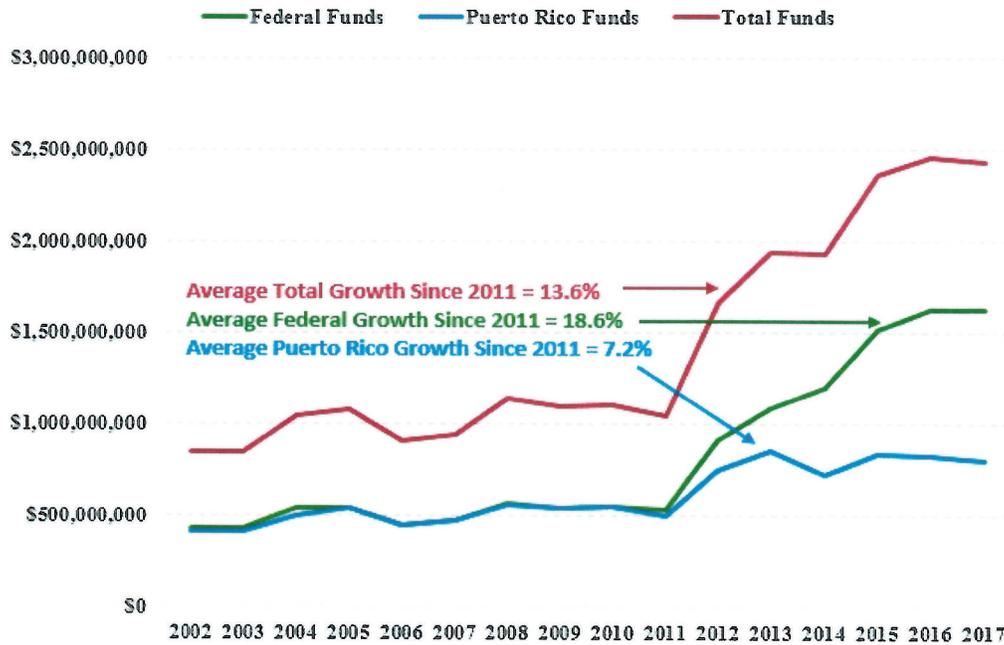
According to the chart below, showing Puerto Rico Medicaid expenditures broken down by contributions from federal and Puerto Rico funds, along with the total, as reported on Form CMS-64, there has been a precipitous increase in growth of Medicaid spending in Puerto Rico during a time of population decline.

The average growth rates for Medicaid spending in Puerto Rico since 2011 have been: 13.6% in total; 18.6% in federal spending; and, 7.2% in Puerto Rico spending. In contrast, during the pre-ACA period from 2003 through 2010, growth averaged: 4.2% in total; 4.0% in federal spending; and, 4.4% in Puerto Rico spending.<sup>2</sup>

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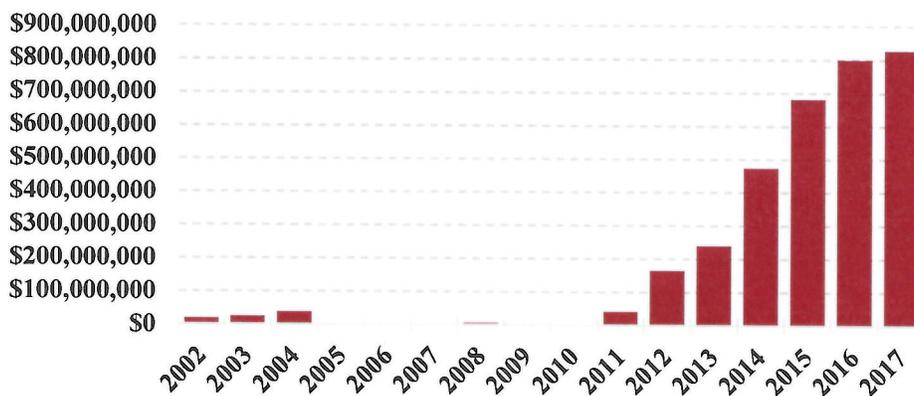
<sup>1</sup> For example, the Obama administration adopted one version of the definition of what constituted a "State" in 2013 (<https://www.doi.gov/sites/doi.gov/files/migrated/oia/igja/upload/12-3-HHS-CMS-CNMI-Letter-igisomar7-12-13.pdf>) and then, following ensuing risks to stability in health-care systems in the territories, adopted a different version in 2014 (<https://www.cms.gov/CCIIO/Resources/Letters/Downloads/letter-to-Weyne.pdf>).

<sup>2</sup> Based on data from MACPAC March 2019 Fact Sheet, titled "Medicaid and CHIP in Puerto Rico," and references therein. (See <https://www.macpac.gov/wp-content/uploads/2019/03/Medicaid-and-CHIP-in-Puerto-Rico.pdf>).



As the next chart shows, following passage of the ACA, beginning in 2011 the difference between federal spending on Medicaid in Puerto Rico and spending by Puerto Rico has also risen precipitously, reflecting the differential growth rates between federal and Puerto Rico spending.

**Difference Between Federal and Puerto Rico**



The authors of the ACA arrived at a significant, but temporary, expansion of the federal role in financing Puerto Rico's Medicaid program. However, as indicated earlier, we are not aware of any analytical support for the pace of expansion inserted into the ACA by its authors on a temporary basis. And, we are not aware of any reasoning behind the ACA authors' having chosen to make the expansion only temporary.

Unfortunately, Medicaid funding cliffs for Puerto Rico have recurred, and no permanent solution has been put in place. Currently, Congress is again considering Medicaid funding for Puerto Rico. We are again confronting proposals for what amounts to another extension of boosted

funding with no permanence or certainty and without any resolution of the Medicaid funding cliff constructed as part of the ACA.

There have been numerous, sporadic, Medicaid funding increases for Puerto Rico in recent years following the ACA. The Consolidated Appropriations Act, 2017 (P.L. 115-31), for example, provided an additional \$295.9 million of Medicaid funding to Puerto Rico. The Bipartisan Budget Act of 2018 (P.L. 115-123) provided an additional \$4.8 billion to mitigate Hurricane Maria's impact on Puerto Rico's health system, available at a 100% matching rate.

Related to federal funding, and especially so in light of recent allegations of corruption, there has historically been a lack of transparency with respect to Puerto Rico's use of Medicaid funds.

Puerto Rico's Medicaid managed care plans are required to perform surveys of provider and enrollee satisfaction measures, and to report results, and may need to participate in projects designed to improve quality and performance. However, there have been reports by the Government Accountability Office and the Department of Health and Human Services' (HHS) Office of the Inspector General highlighting concerns about oversight and monitoring of Puerto Rico's managed care plans.

Congress has required increased efforts in recent years on the part of Puerto Rico with respect to transparency and accountability in its Medicaid program. For example, Puerto Rico is supposed to have set up a Medicaid fraud control unit (MFCU) and a program integrity unit to detect eligibility fraud. Yet, as we understand it, Puerto Rico is exempt by statute from some federal program integrity requirements, such as a program to measure payment error rates.

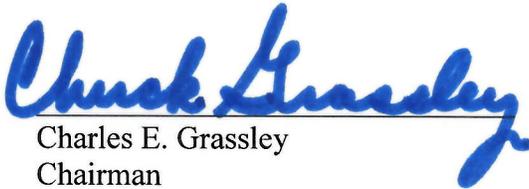
In light of recent allegations of misuse of federal funds in an agency in Puerto Rico responsible for administering, among other things, federal funds provided for its Medicaid program, it is important to understand where Puerto Rico stands with respect to federal funding and our ability to perform oversight and ensure accountability.

Please provide answers to the following questions and requests by July 30, 2019:

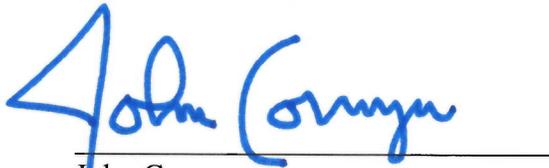
1. According to HHS, what is the annual total dollar amount of Medicaid spending for Puerto Rico in each fiscal year since 2014?
2. According to HHS, what is the dollar amount of *federal* spending for Medicaid for Puerto Rico and the dollar amount of Puerto Rico government spending in each fiscal year since 2014?
3. What supplemental funding, beyond Puerto Rico's Section 1108 allotment and 55% FMAP, has been provided for Puerto Rico's Medicaid program in each fiscal year since 2014?
4. What has been Puerto Rico's effective FMAP in each fiscal year since 2014?
5. What controls are in place to account for and monitor federal funding for Puerto Rico's Medicaid program?
6. Has, to the satisfaction of HHS, Puerto Rico established a functioning MFCU?

7. Has, to the satisfaction of HHS, Puerto Rico established a functioning program integrity unit to detect eligibility fraud?
8. Does Puerto Rico have, or intend to implement, a Payment Error Rate Measurement program?
9. Does Puerto Rico have, or intend to implement, a Medicaid Eligibility Quality Control program?
10. Does Puerto Rico have, or intend to implement, an asset verification system with financial institutions?
11. If there is an intention to implement, with respect to 5, 6, and/or 7 above, what is the timeline for completion?

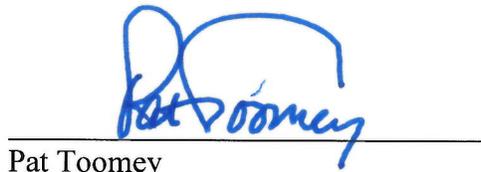
Sincerely,

  
Charles E. Grassley  
Chairman  
U.S. Senate Committee on Finance

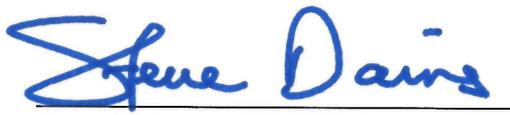
  
Michael B. Enzi  
United States Senator

  
John Cornyn  
United States Senator

  
John Thune  
United States Senator

  
Pat Toomey  
United States Senator

  
James Lankford  
United States Senator

  
Steve Daines  
United States Senator