

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201



November 18, 2021

Edna Y. Marín-Ramos,
Medicaid Director
Puerto Rico Medicaid Program
P.O. Box 70184
San Juan, Puerto Rico 00936-8184

Dear Ms. Marín-Ramos:

As each fiscal year approaches, Centers for Medicare & Medicaid Services (CMS) calculates annual allotments under section 1108(g) of the Social Security Act (the Act), and then issues grant awards to the territories containing that allotment funding. As you know, on September 24, 2021, CMS notified Puerto Rico of its fiscal year (FY) 2022 allotment, which was higher than what some expected. Since that time, legislation was enacted that required the U.S. Government Accountability Office (GAO) to review the determination of the allotment for Puerto Rico for FY 2022. GAO issued its opinion on November 15, 2021. The opinion stated that “section 1108(g) requires that HHS base its calculation of the FY 2022 allotment for Puerto Rico on the territory's allotment for FY 2019, rather than FY 2020.”¹

Based on our thorough review of the statutory text, CMS' interpretation of the FY 2022 allotment cap remains that which was communicated to the territory on September 24, 2021. The statute, in flush language following section 1108(g)(2) of the Act, provides that “[f]or each fiscal year after fiscal year 2021, the total amount certified [for each territory's allotment] for the fiscal year shall be determined as if the preceding subparagraphs,” which generally specify each territory's allotment amount for FY 1999 and each fiscal year thereafter, “were applied to each of fiscal years 2020 through 2021 without regard to clause (ii) of each such subparagraph.” For each territory other than Puerto Rico, clause (ii) of the subparagraph of section 1108(g)(2) relevant to the territory specifies the amount certain for that territory's allotment for FY 2020. However, clause (ii) of section 1108(g)(2)(A), applicable to Puerto Rico, specifies no amount certain for a year, but instead directs us to section 1108(g)(6) to obtain the amount certain for Puerto Rico for each of FY 2020 and FY 2021. Therefore, to apply the instruction in the flush language following section 1108(g)(2) of the Act to Puerto Rico in the same manner as to the other territories (there being no indication in the text that the instruction is to apply differently to any of the territories), CMS looked to the cross reference in section 1108(g)(2)(A)(ii) to reach the amount certain for FY 2021 for Puerto Rico, as specified in section 1108(g)(6)(A)(ii) of the Act, to be disregarded in calculating Puerto Rico's FY 2022 allotment. Given the structural differences between section 1108(g)(2)(A) for Puerto Rico, and section 1108(g)(2)(B) through

¹ <https://www.gao.gov/products/b-333602>

(E) for each of the other territories, it was reasonable to follow the textual reference to section 1108(g)(6) to ascertain the amount certain for the year to be disregarded for Puerto Rico.


The CMS interpretation of the provisions in section 1108(g) of the Act for the territories' FY 2022 Medicaid allotments treats the territories similarly in several ways. First, this interpretation of the statutory language is structurally consistent, as it locates the provision where Congress has specified an amount certain for a particular fiscal year to be disregarded in calculating the territory's allotment amount for fiscal years after 2021, rather than, in Puerto Rico's case alone, disregarding a provision that specifies no amount certain for a year. Second, the CMS interpretation bases each territory's FY 2022 allotment on the smaller of the territory's amount for FY 2020 (smaller than FY 2021 for Puerto Rico) or for FY 2021 (smaller than FY 2020 for each of the other four territories). Third, it provides each territory a modest adjustment to its allotment from FY 2021 to FY 2022, rather than a modest increase for four territories and a drastic decrease for one. If the statute were interpreted as suggested in the recently released opinion, available FY 2022 federal Medicaid funding for the four territories other than Puerto Rico would increase slightly (approximately 2.7%) over those territories' FY 2021 allotment levels, but available federal Medicaid funding for Puerto Rico would be slashed by over 86%. While the four other territories would receive federal Medicaid support at a level likely to approximately meet their programmatic needs, Puerto Rico's allotment would be wholly insufficient to match its qualifying Medicaid expenditures. In our view, this grossly disparate treatment of the territories could not have been intended by Congress, and there is nothing in the record to indicate that this disparate treatment would have been consistent with Congressional intent. The agency continues to believe that this would be an absurd result, which is avoided by the alternative, reasonable interpretation of the statutory text that we have identified.

Therefore, the agency continues to believe that the FY 2022 allotment cap of \$2,943,000,000 for Puerto Rico that we communicated on September 24, 2021, is consistent with the statute.

CMS remains committed to meeting the needs of the American citizens and residents in Puerto Rico and the other U.S. territories who rely on the vital health care services covered by Medicaid and the Children's Health Insurance Program (CHIP).

We are happy to discuss these matters with you and your staff. Please reach out with any questions.

Sincerely,

A large black rectangular redaction box covering the signature of Daniel Tsai.

Daniel Tsai
Deputy Administrator and Director