

COMMONWEALTH OF PUERTO RICO  
PUERTO RICO FEDERAL AFFAIRS ADMINISTRATION

ANÍBAL ACEVEDO-VILÁ  
GOVERNOR

EDUARDO BHATIA  
EXECUTIVE DIRECTOR

August 17, 2005

Hon. Donald Sundquist  
Chairman  
Medicaid Commission  
Office of the Secretary  
Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC 20201

Dear Governor Sundquist:

I would like to take this opportunity to share with the Members of the Medicaid Commission a series of recommendations relative to Federal/Commonwealth of Puerto Rico Medicaid partnership which are consistent with the National Governor's Association policy EC-16, Medicaid Reform Policy. Also attached is a statement for the record which Governor Acevedo-Vilà submitted for the June 15th Medicaid hearings of the Senate Finance and the House Energy and Commerce Committees.

During the past 37 years the Commonwealth of Puerto Rico's Federal Matching Assistance Percentage (FMAP) has effectively shrunk from 50 percent to 18 percent. Federal Medicaid support for Puerto Rico equates to less than \$20 per month per low income healthcare client. If the Puerto Rico Medicaid cap enacted at \$20 million in 1968 would have grown at the same rate the Medicaid program has grown, the cap today would be about \$1.7 billion instead of its current \$219 million. Puerto Rico would not only have a different Medicaid program today, but it would have a different healthcare system.

As the Medicaid Commission moves forward, I urge you to examine how the partnership Medicaid between the Federal government and the Commonwealth of Puerto Rico has developed an "imbalance," and to work to put in place a pathway to rebalancing this partnership. In particular it is critical that the Commission follow two principles when examining the Federal/Commonwealth Medicaid partnership.

The first principle needs to be: the Puerto Rico FMAP cannot be allowed to shrink any further and the current the gap in healthcare between the states and the island to grow any greater. The second principle must be: a pathway needs to be established so that over time Federal participation in the Puerto Rico healthcare system is rebalanced so that it is

aligned with not only the responsibilities and obligations imposed by the Federal government, and nearer to the 50 percent FMAP established by Congress.

### **Stopping the Reduction of Commonwealth's effective FMAP rate**

To address the first principle of not allowing the current effective FMAP to shrink any further it is important for the Commission to recommend to Congress to include the following in the FY2006 budget reconciliation:

**1. Pace the Cap to Medicaid Growth.** The Puerto Rico Medicaid cap needs to grow so that the annual adjustment is no less than the percentage increase in the national Medicaid program. Without this change the healthcare gap between Puerto Rico and the states will grow by \$148 million over the next five years. From 1998 to 2003, Federal support for Medicaid increased nationally 65 percent while Federal support for Medicaid in Puerto Rico increased 30 percent. The disparity in the growth rate is an issue that must be addressed this year, because each year that it is delayed, there are increasing pressures on the Commonwealth's healthcare system and fiscal strength. This change is consistent with actions Congress took in regard to the Medicare Modernization Act where the annual adjustment to the Commonwealth's prescription drug block grant is based upon the annual growth of Medicare Part D.

**2. Keeping the Program Current.** It is essential that any new authorizations or reauthorizations of mandatory or optional Medicaid services established by Congress need to be available to Puerto Rico, with reimbursements outside of the Medicaid cap. There is at least two such authorizations anticipated this year:

a. Family Opportunity Act (FOA) (HR1443, S183). The FOA, as drafted, effectively precludes Puerto Rico from participating, as the cap on Medicaid reimbursement will prevent any Federal participation. If Congress enacts FOA this year, it is essential that Puerto Rico be permitted to participate in this program, so that families and children with disabilities in Puerto Rico are not left behind.

b. Transitional Medical Assistance (TMA). The Congress requires Puerto Rico to meet all of the same work standards of the Temporary Assistance to Needy Families (TANF), but the Commonwealth is not authorized to participate in TMA. TMA is recognized as one of the most critical elements in the success of moving families from welfare to work. When Congress reauthorizes TANF and TMA, it is essential that Puerto Rico be authorized to participate in and receive reimbursements for TMA so that it is in a stronger position to meet its TANF obligations.

c. New Freedoms Initiative. On August 5, 2005, the Administration sent to Congress for their review a draft bill entitled, "New Freedom Initiative Medicaid Demonstrations Act of 2005". The draft legislation seeks to address some of the challenges facing the elderly, people with disabilities, and their caregivers. However, for the Commonwealth of Puerto Rico to be authorized to compete for these funds, it will be necessary to include "outside the cap" provisions for each of the demonstration programs.

d. Long Term Care Initiatives. S1602 introduced in recent weeks by Senator Grassley and Bayh provides for several Medicaid reforms which address long term care issues. While the Commonwealth will be required to comply with the regulatory provisions of the bill, as drafted Puerto Rico would not be in a position to share in any of the benefits. It is essential that the Commonwealth at least be authorized to receive Medicaid reimbursement for the home and community based care provision, outside of the existing Medicaid cap.

In order to make sure that the financing gap between Medicaid in the states and Medicaid in Puerto Rico does not increase any greater than it currently is, it essential that every Medicaid expansion include provisions that authorize Puerto Rico to participate and receive reimbursements for the expansion beyond the cap.

### **Establishing a Pathway to Rebalance the Partnership**

To begin to establish a pathway to “rebalance” the Federal/Commonwealth Medicaid partnership so that it is aligned with the responsibilities and obligations imposed by the Federal government, and nearer to the 50 percent FMAP established by Congress, there are several recommendations that the Commission should consider in it’s near term recommendations. These include:

- 1. Born in the USA:** Every Medicaid eligible child born after 2004 in Puerto Rico should be excluded from the Medicaid cap for reimbursement purposes. This incremental growth in the cap will guarantee the 27,000 Medicaid eligible US citizens who are born in Puerto Rico each year will have the same opportunity for healthcare coverage as children on the mainland.
- 2. Consent Decrees:** The Commonwealth is under two consent decrees initiated by the US Justice Department requiring the expenditure of funds that are eligible for Medicaid reimbursement, but not eligible for a Federal match in Puerto Rico. My fellow Governors are concerned about the impact of the consent decrees since they are required to pay between 20 and 50 percent of their costs (Federal Medicaid financing the balance). I am particularly concerned as the Commonwealth is not authorized to receive any additional reimbursement for eligible Medicaid costs resulting from the enforcement action of the U.S. Justice Department, and is required to absorb 100 percent of the costs.
- 3. Critical Healthcare Needs.** There are a number of areas of Medicaid that the Commonwealth is not able to participate because of the Medicaid cap and or other authorization issues. These include the breast and cervical cancer program, reimbursement programs targeted to the frail elderly and those senior who are eligible for Medicare as well as Medicaid. There are services that states traditionally reimbursement for such as healthcare for children with disabilities who are in IDEA programs. Being precluded from these programs has critical impacts on the children and elderly who are in needs of these services.

**4. Medical Records:** Puerto Rico has made great strides in developing an electronic Medical records system, with no Federal support because of the Medicaid cap. The Commonwealth can also make great strides in its healthcare system, if it is authorized to develop its health records systems at the same pace as the States. Authorizing eligible electronic data processing expenditures for Puerto Rico to be reimbursed outside of the cap would support that effort.

The inclusion of these initiatives will help lay the foundation for a pathway that moves Puerto Rico FMAP rate from its current 18 percent and starts the process of increasing per capita Medicaid reimbursement beyond \$20 per month per client.

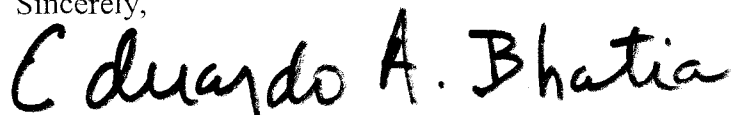
As this Commission moves forward with comprehensive Medicaid reform, I encourage you to consider the guidance of the NGA policy where it recommends that Medicaid reform “needs to include a review of the current relationship and the development of a pathway that moves to a rebalancing of this partnership.” The cap established in 1968 is grounded in neither healthcare nor economic policy. The result is an effective FMAP for Puerto Rico of approximately 18 percent, a rate that could not be sustained in any jurisdiction.

The Commonwealth of Puerto Rico has a long history and strong commitment to providing comprehensive healthcare in its communities, and that commitment is not going to change. However, meeting that goal and fulfilling the Federal statutory requirements such as Early and Periodic Screening, Diagnosis and Treatment (ESPDT), and Health Insurance Portability and Protection Act (HIPPA), Federal Court rulings such as *Olmstead* and *Cedar Rapids*, and meeting the Federal regulatory requirements of Health Resources and Services Administration and the Center for Medicare and Medicaid Services without a more balanced Federal partnership creates inordinate financial pressure that has an impact on the type and quality of healthcare provided.

Working together, sharing ideas, examining the effects of current policy, I believe that we can establish a pathway to rebalancing the Commonwealth/Federal partnership - a pathway that makes economic sense for both the Federal government and the Commonwealth.

I certainly appreciate your consideration of the issues which I have raised, and the Commonwealth’s Federal Affairs and Healthcare teams are available to discuss these important matters with you in further detail. For additional information, I encourage you to contact Earl Gohl of Washington Federal Affairs team at (202) 955-8457.

Sincerely,

A handwritten signature in black ink that reads "Eduardo A. Bhatia". The signature is written in a cursive, slightly slanted style.

Eduardo Bhatia  
Executive Director

Statement for the Record

Governor Anibal Acevedo-Vilá  
Commonwealth of Puerto Rico

For the  
Senate Finance Committee  
Wednesday, June 15, 2005  
Hearing on

**The Future of Medicaid: Strategies for Strengthening  
American's Vital Safety Net**

*"The federal Medicaid partnership with U.S. commonwealths and territories has become increasingly unbalanced over a period of years.... The imbalance affects quality of care issues and creates increased financial stress. Medicaid reform needs to include a review of the current relationship and the development of a pathway that moves to a rebalancing of this partnership."*

National Governor's Association  
*Policy Position*  
EC-16. Medicaid Reform Policy

The National Governors Association Policy Position EC-16 recognizes the imbalance that has developed over a period of years in regard to the Federal Medicaid partnership, the Commonwealth of Puerto Rico and the U.S. territories.

I would like to take this opportunity to add my support to the NGA policy and to put forward interim steps that begin to address this imbalance.

In 1968, three years after the start of the Medicaid program, Congress established a \$20 million limit on the level of federal Medicaid that would be available to the Commonwealth of Puerto Rico. At that time Federal Medicaid costs, nationally, totaled \$1.1 billion. The Commonwealth matching assistance percentage (FMAP) continued at the 50 percent level; however, the Federal cap meant that there was no reimbursement for expenses to Puerto Rico once the Commonwealth expended \$40 million. From time to time, Congress has raised the cap, but has never reviewed the cap in terms of healthcare or fiscal policy.

Currently, the Commonwealth of Puerto Rico's effective FMAP rate approximates 18 percent. If the 1968 cap had been authorized to grow at the same rate as Medicaid grew nationally, Federal support for Medicaid in Puerto Rico would now approximate \$1.7 billion, as opposed to the current Federal support of \$219 million. In the states, federal Medicaid support approximates \$330 per month per participant as compared to federal support in Puerto Rico of about \$20 per month per participant. If Puerto Rico's 1968 Medicaid cap had increased as the Medicaid program increased, nationally, the average monthly Federal contribution would be about \$173 per participant, still a fraction of average Federal support.

These are the challenges the Commonwealth's healthcare community confronts while operating in an economy where the cost of living is no less than many metropolitan areas in the states, and all of the Federal regulatory requirements governing healthcare facilities and providers are the same in Puerto Rico as they are in the states.

As Congress moves forward with its review of Medicaid, I would urge that the Committees consider adhering to four principles in terms of addressing Medicaid in Puerto Rico:

1. It is in the interest of both the Federal Government and the Commonwealth that the existing healthcare gap between the Island and the states does not grow any greater, and that measures need to be taken to narrow this gap.
2. Federally mandated expenses resulting from Federal consent decrees and U.S. Justice Department enforcement actions should be reimbursed outside of the cap.
3. Critical healthcare needs, particularly for children, persons with disabilities and the frail elderly, need to be considered as strategic healthcare investments, with the Federal contribution coming outside of the cap.
4. The Federal investment in Puerto Rico's healthcare must be safeguarded and efforts and initiatives, particularly in technology, that can safeguard the Federal investment and make the healthcare system more productive should be encouraged and supported.

In addressing the first principle of not allowing the healthcare gap between the Island and the states to grow any further, I believe that there are three actions which the Committee can take this year that would be meaningful in starting to address the current imbalance:

1. Family Opportunity Act (FOA) (HR1443, S183). The FOA, as drafted, effectively precludes Puerto Rico from participating, as the cap on Medicaid reimbursement will prevent any Federal participation. If Congress enacts FOA this year, it is essential that Puerto Rico be permitted to participate in this program and the New Freedoms Initiatives must be placed outside of the cap, so that families and children with disabilities in Puerto Rico are not left behind.

2. Transitional Medical Assistance (TMA). The Congress requires Puerto Rico to meet all of the same work standards of the Temporary Assistance to Needy Families (TANF), but the Commonwealth is not authorized to participate in TMA. TMA is recognized as one of the most critical elements in the success of moving families from welfare to work. When Congress reauthorizes TANF and TMA, it is essential that Puerto Rico be authorized to participate in and receive reimbursements for TMA so that it is in a stronger position to meet its TANF obligations.

3. Adjustment Factor. From 1998 to 2003, Federal support for Medicaid increased nationally 65 percent while Federal support for Medicaid in Puerto Rico increased 30 percent. The disparity in the growth rate is an issue that must be addressed this year, because each year that it is delayed, there is increasing pressures on the Commonwealth's healthcare system and fiscal strength. I urge the Committee to amend the provisions related to the annual adjustment for the Puerto Rico's Medicaid cap so that the adjustment is no less than the percentage increase in the national Medicaid program. This can be an important step in addressing the overall healthcare gap. It will also be consistent with actions Congress took in regard to the Medicare Modernization Act where the annual adjustment to the Commonwealth's block grant is based upon the annual growth of Medicare Part D.

These three steps start to lay the foundation to address the current imbalance. By including Puerto Rico in the two authorizations and adopting an adjustment policy that reflects changes in the program nationally, Congress will put into practice the principle of not permitting the imbalance of the Commonwealth/Federal Medicaid partnership.

I urge the Committee to consider these proposals as you move forward with budget reconciliation and I am certainly available to work with the Committee to find solutions which start to realign the current imbalance of the Commonwealth Medicaid partnership with the Federal government.

When Congress considers long term comprehensive Medicaid reform, I urge the Committee to examine the issues I raised previously, including:

1. Impact of Consent Decrees. The Commonwealth is under two consent decrees initiated by the US Justice Department requiring the expenditure of funds that are eligible for Medicaid reimbursement, but not eligible for a Federal match in Puerto Rico. My fellow Governors are concerned about the impact of the consent decrees since they are required to pay between 20 and 50 percent of their costs (Federal Medicaid financing the balance). I am particularly concerned as the Commonwealth is not authorized to receive any additional reimbursements for eligible Medicaid costs resulting from the enforcement action of the U.S. Justice Department, and is required to absorb 100 percent of the costs.

2. Critical Needs. Critical healthcare needs, particularly for children, persons with disabilities and the frail elderly must be assessed with consideration given to possible support for strategic healthcare needs investments and should be viewed in the context of Medicaid reform to insure that these vulnerable populations are adequately served. One simple way to begin to take care of these critical needs and to begin to narrow the existing gap would be a new policy that would place the Federal contribution of Medicaid coverage outside of the existing cap for every child born after a date certain. This way, we begin to take care of our children first, and we tackle the existing gap in a slow, but steady fashion.

3. Safeguards and Technology. The Federal investment in Puerto Rico's healthcare must be safeguarded. Efforts and initiatives needed to protect that investment and make it more productive should be encouraged and supported. While technology development has been encouraged in the states with as much as 90 percent reimbursements for improvements, the Commonwealth has not been authorized to receive similar support. The President's initiative on "interoperable health information technology infrastructure" is an opportunity to make great strides in the quality and productivity of the Commonwealth's healthcare system, that can pay



dividends to both the Federal government and Puerto Rico, provided the Commonwealth is authorized to access Medicaid funding for the development of these systems, in a manner similar to the states.

As Congress moves forward with comprehensive Medicaid reform, I encourage the Committee to follow the guidance of the NGA policy where it recommends that Medicaid reform “needs to include a review of the current relationship and the development of a pathway that moves to a rebalancing of this partnership.” The cap established in 1968 is grounded in neither healthcare nor economic policy. The result is an effective FMAP for Puerto Rico of approximately 18 percent, a rate that could not be sustained in any jurisdiction.

The Commonwealth of Puerto Rico has a long history and strong commitment to providing comprehensive healthcare in its communities, and that commitment is not going to change. However, meeting that goal and fulfilling the Federal statutory requirements such as Early and Periodic Screening, Diagnosis and Treatment (ESPDT), and Health Insurance Portability and Protection Act (HIPPA), Federal Court rulings such as *Olmstead* and *Cedar Rapids*, and meeting the Federal regulatory requirements of Health Resources and Services Administration and the Center for Medicare and Medicaid Services without a more balanced Federal partnership creates inordinate financial pressure that has an impact on the type of healthcare provided.

As the Committee moves forward with budget reconciliation I would urge establishment of the principle that the current Commonwealth/Federal Medicaid partnership should not develop any further imbalance, and that this goal can be accomplished by enacting the three proposals I have outlined. Secondly, in terms of comprehensive long term Medicaid reform I urge the Committee to examine the current Commonwealth/Federal Medicaid partnership with the objective of establishing a more balanced partnership, particularly in light of the healthcare needs, consent decrees and opportunities for technological advances.

Working together, sharing ideas, examining the effects of current policy, I believe that we can establish a pathway to rebalancing the Commonwealth/Federal partnership, a pathway that makes economic sense for both the Federal government and the Commonwealth.