

116TH CONGRESS
1ST SESSION

H. R. 3371

To amend titles XI and XIX of the Social Security Act to stabilize the Medicaid program in Puerto Rico.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2019

Ms. VELÁZQUEZ (for herself, Mr. SOTO, Mr. SERRANO, Mr. GRIJALVA, Mr. ESPAILLAT, Ms. OCASIO-CORTEZ, Mr. GARCÍA of Illinois, and Miss GONZÁLEZ-COLÓN of Puerto Rico) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend titles XI and XIX of the Social Security Act to stabilize the Medicaid program in Puerto Rico.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Puerto Rico Health
5 Care Fairness, Accountability, and Beneficiary Access Act
6 of 2019”.

1 **SEC. 2. ADJUSTMENTS TO FMAP AND CAP FOR PUERTO**
2 **RICO.**

3 (a) ADJUSTMENTS TO FMAP.—Section 1905 of the
4 Social Security Act (42 U.S.C. 1396d) is amended—

5 (1) in subsection (b)—

6 (A) by striking “for Puerto Rico, the Vir-
7 gin Islands” and inserting “for the Virgin Is-
8 lands”; and

9 (B) by striking “and American Samoa
10 shall be 55 percent,” and inserting “and Amer-
11 ica Samoa (and, for calendar quarters in a fis-
12 cal year before fiscal year 2020, Puerto Rico)
13 shall be 55 percent, and for Puerto Rico, for
14 calendar quarters in a fiscal year beginning
15 with fiscal year 2020, shall be the PR specified
16 percent under subsection (ff) for such fiscal
17 year,”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(ff)(1) For purposes of subsection (b), the PR speci-
21 fied percent under this subsection is—

22 “(A) subject to paragraph (2), for each of fiscal
23 years 2020 through 2024, 83 percent;

24 “(B) subject to paragraph (3)(D)(iii), for each
25 of fiscal years 2025 through 2029, 83 percent; and

1 “(C) subject to paragraph (3)(D)(iii), for fiscal
2 year 2030 and each subsequent fiscal year, the Fed-
3 eral medical assistance percentage calculated in ac-
4 cordance with the first sentence of subsection (b), as
5 such sentence applies to the 50 States.

6 “(2)(A) If Puerto Rico—

7 “(i) for fiscal year 2021, is in compliance with
8 none of the program enhancement requirements de-
9 scribed in subparagraph (B), the PR specified per-
10 cent specified under paragraph (1) for such fiscal
11 year shall be reduced by 2 percent;

12 “(ii) for fiscal year 2022, is in compliance with
13 fewer than two of the four program enhancement re-
14 quirements described in subparagraph (B), the PR
15 specified percent specified under paragraph (1) for
16 such fiscal year shall be reduced by 3 percent;

17 “(iii) for fiscal year 2023, is in compliance with
18 fewer than three of the four program enhancement
19 requirements described in subparagraph (B), the PR
20 specified percent specified under paragraph (1) for
21 such fiscal year shall be reduced by 5 percent; and

22 “(iv) for fiscal year 2024, is in compliance with
23 fewer than four of the program enhancement re-
24 quirements described in subparagraph (B), the PR

1 specified percent specified under paragraph (1) for
2 such fiscal year shall be reduced by 5 percent.

3 “(B) For purposes of this subsection, the program
4 enhancement requirements described in this subparagraph
5 are each of the following:

6 “(i) Rates of payment under the State plan
7 under this title for inpatient hospital services are not
8 less than the costs incurred for such services.

9 “(ii) Rates of payment under the State plan
10 under this title for physicians’ services are not less
11 than 70 percent of the amount that is payable for
12 such services under section 1848.

13 “(iii) The State plan provides for medical as-
14 sistance for Hepatitis C drugs, in accordance with
15 the requirements of section 1927 otherwise applica-
16 ble to the 50 States.

17 “(iv) The State plan provides for medical as-
18 sistance for Medicare cost-sharing described in sub-
19 section (p)(3)(A)(ii) for qualified Medicare bene-
20 ficiaries described in subsection (p)(1), in accord-
21 ance with the requirements under subsection (p) oth-
22 erwise applicable to the 50 States.

23 “(3)(A)(i) Not later than January 1, 2022, the Gov-
24 ernor of Puerto Rico shall submit to the Secretary a Terri-
25 tory Transition Plan, which shall be developed with stake-

1 holder input and with a public comment period, that in-
2 cludes—

3 “(I) a detailed description of which pro-
4 gram enhancements described in subparagraph
5 (C) Puerto Rico will include as medical assist-
6 ance under the State plan under title XIX, the
7 first plan year by which each such program en-
8 hancement will be so included in order to sat-
9 isfy the requirements described in subparagraph
10 (B), and a timeline for milestones for including
11 such program enhancements; and

12 “(II) a description of any challenges, in-
13 cluding infrastructure challenges, provider
14 shortages, and financing challenges, for so in-
15 cluding such program enhancements and a plan
16 to ameliorate any such challenges.

17 “(ii) The plan submitted under clause (i) shall be
18 treated as approved by the Secretary not later than 180
19 days after the date of submission of the plan unless within
20 such 180-day period the Secretary disapproves such plan
21 and notifies Puerto Rico of such disapproval with the rea-
22 son for such disapproval. In the case of such a disapproval,
23 the Governor of Puerto Rico shall, within the 90-day pe-
24 riod following such notification, submit to the Secretary
25 a Territory Transition Plan that addresses the reason

1 specified in such notification for such disapproval. Such
2 resubmitted plan shall be treated as approved by the Sec-
3 retary under this clause unless the Secretary notifies
4 Puerto Rico within the 30-day period following such sub-
5 mission of its disapproval with a reason for such dis-
6 approval. The Governor of Puerto Rico may develop and
7 submit to the Secretary, in the same manner and subject
8 to the same conditions as apply under clause (i) to the
9 development and submission of the Territory Transition
10 Plan, modifications to the plan and such modifications
11 shall be treated as approved by the Secretary and incor-
12 porated into the plan in the same manner and subject to
13 the same conditions that apply under this clause to the
14 approval of the plan.

15 “(B) For purposes of this paragraph, the require-
16 ments described in this subparagraph, with respect to
17 Puerto Rico, are the following:

18 “(i) For 2027, the State plan under title XIX
19 includes at least 2 of the program enhancements de-
20 scribed in subparagraph (C).

21 “(ii) For 2029, the State plan includes at least
22 4 of such program enhancements.

23 “(iii) For 2031, the State plan includes at least
24 6 of such program enhancements.

1 “(iv) For 2033 and each subsequent year, the
2 State plan includes all of such program enhance-
3 ments.

4 “(C) For purposes of this paragraph, the program
5 enhancements described in this subparagraph are the fol-
6 lowing:

7 “(i) The State plan provides for medical assist-
8 ance to all individuals described in clause (i) of sec-
9 tion 1902(a)(10)(A)).

10 “(ii) The State plan provides for inclusion as
11 medical assistance of home health services, in ac-
12 cordance with section 1902(a)(10)(D).

13 “(iii) The State plan provides for inclusion as
14 medical assistance of nonemergency transportation
15 to medically necessary services.

16 “(iv) The State plan provides for inclusion as
17 medical assistance of services described in subsection
18 (a)(21) to all individuals described in clause (i) of
19 section 1902(a)(10)(A)).

20 “(v) The State plan provides for inclusion as
21 medical assistance of services described in subsection
22 (a)(17) to all individuals described in such clause
23 (other than subclause (VIII) of such clause.

1 “(vi) The State plan provides for inclusion as
2 medical assistance of nursing facility services, as de-
3 fined in subsection (a)(4)(A).

4 “(vii) The State plan provides for inclusion as
5 medical assistance of early and periodic screening,
6 diagnosis, and treatment services under subsection
7 (a)(4)(B).

8 “(viii) The State plan provides for inclusion as
9 medical assistance of freestanding birth center serv-
10 ices and other ambulatory services, as described in
11 subsection (a)(28).

12 “(D)(i) For fiscal year 2022 and each subsequent fis-
13 cal year through fiscal year 2033—

14 “(I) the Comptroller General of the United
15 States shall review, and submit to the Secretary and
16 Congress a report on, whether or not Puerto Rico is
17 in compliance with the timeline and achieving the
18 milestones described in the Territory Transition plan
19 (as modified, if applicable) approved under subpara-
20 graph (A) and, beginning with fiscal year 2027,
21 whether Puerto Rico is in compliance with the appli-
22 cable requirements described in subparagraph (B);
23 and

24 “(II) Puerto Rico shall submit to the Secretary
25 a report on the extent to which Puerto Rico has met

1 the timelines and milestones included in such plan
2 (as modified, if applicable).

3 “(ii) If, for a fiscal year described in clause (i) after
4 fiscal year 2024, the Comptroller General submits a report
5 with a finding that Puerto Rico is not in compliance with
6 the timeline or with achieving milestones as described in
7 subclause (I) (or, with respect to a fiscal year after fiscal
8 year 2026, not in compliance with the applicable require-
9 ment under subparagraph (B)), not later than 90 days
10 after the date of such finding, Puerto Rico shall submit
11 to the Secretary for approval a corrective action plan to
12 remedy such noncompliance.

13 “(iii) If, by not later than a period specified by the
14 Secretary after the date of the submission (and approval)
15 of a corrective action plan under clause (ii), with respect
16 to a fiscal year after fiscal year 2024 for which a finding
17 of non-compliance was made under clause (i), the Sec-
18 retary determines that Puerto Rico has not fulfilled the
19 terms of such corrective action plan, the PR specified per-
20 cent specified under paragraph (1) for the fiscal year in-
21 volved shall be reduced by 5 percent for the period begin-
22 ning with the month beginning after such determination
23 and ending with the first month beginning after the Sec-
24 retary determines Puerto Rico has fulfilled the terms of
25 the corrective action plan.”.

1 (b) TREATMENT OF CAP.—Section 1108(g) of the
2 Social Security Act (42 U.S.C. 1308(g)) is amended—

3 (1) in paragraph (2)—

4 (A) in the matter preceding subparagraph
5 (A), by striking “subject to and section
6 1323(a)(2) of the Patient Protection and Af-
7 fordable Care Act paragraphs (3) and (5)” and
8 inserting “subject to section 1323(a)(2) of the
9 Patient Protection and Affordable Care Act and
10 paragraphs (3), (5), and (7)”; and

11 (B) in subparagraph (A)—

12 (i) by striking “Puerto Rico shall not
13 exceed the sum of” and inserting “Puerto
14 Rico shall not exceed—

15 “(i) in the case of a fiscal year before
16 fiscal year 2020, the sum of”;

17 (ii) by striking “\$100,000;” and in-
18 serting “\$100,000; and”; and

19 (iii) by adding at the end the fol-
20 lowing new clause:

21 “(ii) in the case of fiscal year 2020
22 and each subsequent fiscal year (before fis-
23 cal year 2025), the amount specified in
24 paragraph (6) for such fiscal year;”; and

1 (2) by adding at the end the following new
2 paragraphs:

3 “(6) APPLICATION TO PUERTO RICO FOR FISCAL
4 YEARS 2020 THROUGH 2024.—For purposes of
5 paragraph (2)(A)(ii), the amount specified in this
6 paragraph is—

7 “(A) for fiscal year 2020, \$2,823,188,000;

8 “(B) for fiscal year 2021, \$2,919,072,000;

9 “(C) for fiscal year 2022, \$3,012,610,000;

10 “(D) for fiscal year 2023, \$3,114,331,000;

11 and

12 “(E) for fiscal year 2024, \$3,225,627,000.

13 “(7) PUERTO RICO EXCLUSION FROM PAYMENT
14 LIMITATION BEGINNING FISCAL YEAR 2025.—Begin-
15 ning with fiscal year 2025, there shall be no limita-
16 tion applied under this subsection (f) or this sub-
17 section on the total amount certified by the Sec-
18 retary under title XIX for payment to Puerto
19 Rico.”.

20 “(c) TEMPORARY INCREASE IN FEDERAL MATCH FOR
21 STATE PLAN ADMINISTRATIVE COSTS.—Section
22 1903(a)(7) of the Social Security Act (42 U.S.C.
23 1396b(a)(7)) is amended by inserting “(or, in the case of

- 1 Puerto Rico for each of fiscal years 2020 through 2033,
- 2 100 percent)” after “50 per centum”.

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