

117TH CONGRESS
1ST SESSION

H. R. 1722

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2021

Ms. VELÁZQUEZ (for herself, Mr. ESPAILLAT, Ms. OCASIO-CORTEZ, Mr. GARCÍA of Illinois, Mr. GRJALVA, and Miss GONZÁLEZ-COLÓN) 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 2021”.

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) by inserting “(except for
6 Puerto Rico, for calendar quarters in a fiscal year
7 beginning with fiscal year 2022, shall be the PR
8 specified percent under subsection (hh) for such fis-
9 cal year)” after “shall be 55 percent”; and

10 (2) by adding at the end the following new sub-
11 section:

12 “(hh) PR SPECIFIED PERCENT.—

13 “(1) IN GENERAL.—For purposes of subsection
14 (b), the PR specified percent under this subsection
15 is—

16 “(A) subject to paragraph (2), for each of
17 fiscal years 2022 through 2026, 83 percent;

18 “(B) subject to paragraph (3)(D)(iii), for
19 each of fiscal years 2027 through 2031, 83 per-
20 cent; and

21 “(C) subject to paragraph (3)(D)(iii), for
22 fiscal year 2032 and each subsequent fiscal
23 year, the Federal medical assistance percentage
24 calculated in accordance with the first sentence
25 of subsection (b), as such sentence applies to
26 the 50 States.

1 “(2) PROGRAM ENHANCEMENT INCENTIVES.—

2 “(A) IN GENERAL.—If Puerto Rico—

3 “(i) for fiscal year 2023, is in compliance
4 with none of the program enhancement require-
5 ments described in subparagraph (B), the PR
6 specified percent specified under paragraph (1)
7 for such fiscal year shall be reduced by 2 per-
8 cent;

9 “(ii) for fiscal year 2024, is in compliance
10 with fewer than two of the four program en-
11 hancement requirements described in subpara-
12 graph (B), the PR specified percent specified
13 under paragraph (1) for such fiscal year shall
14 be reduced by 3 percent;

15 “(iii) for fiscal year 2025, is in compliance
16 with fewer than three of the four program en-
17 hancement requirements described in subpara-
18 graph (B), the PR specified percent specified
19 under paragraph (1) for such fiscal year shall
20 be reduced by 5 percent; and

21 “(iv) for fiscal year 2026, is in compliance
22 with fewer than four of the program enhance-
23 ment requirements described in subparagraph
24 (B), the PR specified percent specified under

1 paragraph (1) for such fiscal year shall be re-
2 duced by 5 percent.

3 “(B) PROGRAM ENHANCEMENT REQUIRE-
4 MENTS.—For purposes of this subsection, the pro-
5 gram enhancement requirements described in this
6 subparagraph are each of the following:

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

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

15 “(iii) The State plan provides for medical
16 assistance for Hepatitis C drugs, in accordance
17 with the requirements of section 1927 otherwise
18 applicable to the 50 States.

19 “(iv) The State plan provides for medical
20 assistance for Medicare cost-sharing described
21 in subsection (p)(3)(A)(ii) for qualified Medi-
22 care beneficiaries described in subsection (p)(1),
23 in accordance with the requirements under sub-
24 section (p) otherwise applicable to the 50
25 States.

1 “(3) TERRITORY TRANSITION PLAN.—

2 “(A) IN GENERAL.—

3 “(i) SUBMISSION OF PLAN.—Not later
4 than January 1, 2024, the Governor of Puerto
5 Rico shall submit to the Secretary a Territory
6 Transition Plan, which shall be developed with
7 stakeholder input and with a public comment
8 period, that includes—

9 “(I) a detailed description of which
10 program enhancements described in sub-
11 paragraph (C) Puerto Rico will include as
12 medical assistance under the State plan
13 under title XIX, the first plan year by
14 which each such program enhancement will
15 be so included in order to satisfy the re-
16 quirements described in subparagraph (B),
17 and a timeline for milestones for including
18 such program enhancements; and

19 “(II) a description of any challenges,
20 including infrastructure challenges, pro-
21 vider shortages, and financing challenges,
22 for so including such program enhance-
23 ments and a plan to ameliorate any such
24 challenges.

“(ii) NOTIFICATION OF PLAN APPROVAL.—

The plan submitted under clause (i) shall be treated as approved by the Secretary not later than 180 days after the date of submission of the plan unless within such 180-day period the Secretary disapproves such plan and notifies Puerto Rico of such disapproval with the reason for such disapproval. In the case of such a disapproval, the Governor of Puerto Rico shall, within the 90-day period following such notification, submit to the Secretary a Territory Transition Plan that addresses the reason specified in such notification for such disapproval. Such resubmitted plan shall be treated as approved by the Secretary under this clause unless the Secretary notifies Puerto Rico within the 30-day period following such submission of its disapproval with a reason for such disapproval. The Governor of Puerto Rico may develop and submit to the Secretary, in the same manner and subject to the same conditions as apply under clause (i) to the development and submission of the Territory Transition Plan, modifications to the plan and such modifications shall be treated as approved by the Sec-

1 retary and incorporated into the plan in the
2 same manner and subject to the same condi-
3 tions that apply under this clause to the ap-
4 proval of the plan.

5 “(B) REQUIREMENTS DESCRIBED.—For pur-
6 poses of this paragraph, the requirements described
7 in this subparagraph, with respect to Puerto Rico,
8 are the following:

9 “(i) For 2029, the State plan under title
10 XIX includes at least 2 of the program en-
11 hancements described in subparagraph (C).

12 “(ii) For 2031, the State plan includes at
13 least 4 of such program enhancements.

14 “(iii) For 2033, the State plan includes at
15 least 6 of such program enhancements.

16 “(iv) For 2035 and each subsequent year,
17 the State plan includes all of such program en-
18 hancements.

19 “(C) PROGRAM ENHANCEMENTS DESCRIBED.—
20 For purposes of this paragraph, the program en-
21 hancements described in this subparagraph are the
22 following:

23 “(i) The State plan provides for medical
24 assistance to all individuals described in clause
25 (i) of section 1902(a)(10)(A)).

1 “(ii) The State plan provides for inclusion
2 as medical assistance of home health services,
3 in accordance with section 1902(a)(10)(D).

4 “(iii) The State plan provides for inclusion
5 as medical assistance of nonemergency trans-
6 portation to medically necessary services.

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

11 “(v) The State plan provides for inclusion
12 as medical assistance of services described in
13 subsection (a)(17) to all individuals described in
14 such clause (other than subclause (VIII) of
15 such clause.

16 “(vi) The State plan provides for inclusion
17 as medical assistance of nursing facility serv-
18 ices, as defined in subsection (a)(4)(A).

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

23 “(viii) The State plan provides for inclu-
24 sion as medical assistance of freestanding birth

center services and other ambulatory services,
as described in subsection (a)(28).

“(D) REPORTS.—

“(i) For fiscal year 2024 and each subsequent fiscal year through fiscal year 2035—

“(I) the Comptroller General of the United States shall review, and submit to the Secretary and Congress a report on, whether or not Puerto Rico is in compliance with the timeline and achieving the milestones described in the Territory Transition plan (as modified, if applicable) approved under subparagraph (A) and, beginning with fiscal year 2029, whether Puerto Rico is in compliance with the applicable requirements described in subparagraph (B); and

“(II) Puerto Rico shall submit to the Secretary a report on the extent to which Puerto Rico has met the timelines and milestones included in such plan (as modified, if applicable).

“(ii) If, for a fiscal year described in clause (i) after fiscal year 2026, the Comptroller General submits a report with a finding that Puerto

1 Rico is not in compliance with the timeline or
2 with achieving milestones as described in sub-
3 clause (I) (or, with respect to a fiscal year after
4 fiscal year 2028, not in compliance with the ap-
5 plicable requirement under subparagraph (B)),
6 not later than 90 days after the date of such
7 finding, Puerto Rico shall submit to the Sec-
8 retary for approval a corrective action plan to
9 remedy such noncompliance.

10 “(iii) If, by not later than a period speci-
11 fied by the Secretary after the date of the sub-
12 mission (and approval) of a corrective action
13 plan under clause (ii), with respect to a fiscal
14 year after fiscal year 2026 for which a finding
15 of non-compliance was made under clause (i),
16 the Secretary determines that Puerto Rico has
17 not fulfilled the terms of such corrective action
18 plan, the PR specified percent specified under
19 paragraph (1) for the fiscal year involved shall
20 be reduced by 5 percent for the period begin-
21 ning with the month beginning after such deter-
22 mination and ending with the first month be-
23 ginning after the Secretary determines Puerto
24 Rico has fulfilled the terms of the corrective ac-
25 tion 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 2022, 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 2022
22 and each subsequent fiscal year (before fis-
23 cal year 2027), 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 2022 THROUGH 2026.—For purposes of
5 paragraph (2)(A)(ii), the amount specified in this
6 paragraph is—

7 “(A) for fiscal year 2022, \$3,012,610,000;

8 “(B) for fiscal year 2023, \$3,114,331,000;

9 “(C) for fiscal year 2024, \$3,225,627,000;

10 “(D) for fiscal year 2025, \$3,336,627,000;

11 and

12 “(E) for fiscal year 2026, \$3,447,627,000.

13 “(7) PUERTO RICO EXCLUSION FROM PAYMENT
14 LIMITATION BEGINNING FISCAL YEAR 2027.—Begin-
15 ning with fiscal year 2027, 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 2022 through 2035,
- 2 100 percent)” after “50 per centum”.

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