



**RESOLUTION# TE-2019-01**

**RESOLUTION IN SUPPORT OF THE TERRITORIES HEALTH CARE IMPROVEMENTS ACT**

---

**WHEREAS**, The Council of State Governments' Eastern Regional Conference (CSG/ERC) is comprised of the 11 member states from Maine to Maryland, the U.S. Virgin Islands, Puerto Rico, and five eastern Canadian provinces; and

**WHEREAS**, President Lyndon B. Johnson signed Title XIX of the Social Security Act in 1965, creating the Medicaid program to provide medical assistance to individuals whose incomes and resources were insufficient to meet the costs of necessary medical services; and

**WHEREAS**, The Medicaid program is a successful partnership between the states and the federal government, allowing states to craft programs that meet their unique strengths and challenges within a national framework; and

**WHEREAS**, The Medicaid program treats territories differently than states; and

**WHEREAS**, As in the states, Medicaid programs in the territories are governed by a Federal Medical Assistance Percentage (FMAP); funding to territories, however, is capped, while funding to states is open-ended; and

**WHEREAS**, The match rate given to the territories is far less generous than the match rate given to poorer states; and

**WHEREAS**, In the states, match rates are adjusted each year to reflect individual states per capita income; and

**WHEREAS**, For years, the territories' match rates stood at 50 percent — the lowest possible rate; and

CT • DE • MA • MD • ME • NB • NH • NJ • NY • NS • ON • PA • PE • PR • QC • RI • VI • VT

Sen. Joe Scarnati, *President Pro Tempore, PA, Co-Chair*  
Rep. Ryan Mackenzie, *PA, Co-Chair*

Wendell M. Hannaford, *Director*



**WHEREAS**, Federal Medicaid funding (FMAP) for Puerto Rico and the U.S. Virgin Islands is subject to an annual cap pursuant to Section 1108 (c)(4) of the Social Security Act (42 U.S.C. 1308), and once the annual federal funding cap is reached, the territory's government is responsible for the remaining cost of all Medicaid services. FMAP rates for Puerto Rico and other territories are not based on per capita income but, rather, are established by federal statute. According to the Congressional Research Service, if based on per capita income, Puerto Rico and the U.S. Virgin Islands FMAP rate would likely be 83 percent, the maximum rate allowable under current Medicaid law; and

**WHEREAS**, The Patient Protection and Affordable Care Act of 2010, commonly known as the Affordable Care Act or ACA, allowed states the option to expand income eligibility for Medicaid to 138 percent of the federal poverty level and provided states a decreasing federal match for expenditures to cover necessary medical services for enrollees in the new income eligibility cohort which decreases from 100 percent in calendar years 2014, 2015, and 2016 to 90 percent in 2020 and beyond; and

**WHEREAS**, Under the Affordable Care Act (ACA), that rate increased from 50 percent to 55 percent and the federal government allotted \$7.3 billion to the five island territories combined, but the majority of this funding is slated to expire at the end of September 2019; and

**WHEREAS**, The health care systems and Medicaid programs in the island territories of Puerto Rico and the U.S. Virgin Islands worsened after the devastation wrought by two of the biggest and most powerful hurricanes in the Caribbean — Irma and Maria in 2017; and

**WHEREAS**, The other territories (American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam) also face challenges ahead of the expiration of ACA funds; and,

**WHEREAS**, Despite the boost in federal funding that was seen in Puerto Rico and the U.S. Virgin Islands in the aftermath of the devastating storms, neither territory has fully



recovered from the storms, the expiration of these funds could jeopardize medical care for the U.S. citizens living in the island territories; and

**WHEREAS**, A Kaiser Family Foundation (KFF) study on the implications of the health funding expiration found that “some health care infrastructure, particularly U.S. Virgin Islands’ hospitals and Department of Health clinics and the facilities on Puerto Rico’s offshore islands still have not recovered fully from the hurricanes. In addition to physical health care facilities, the storms exacerbated long-standing issues with provider recruitment and retention. Both territories struggle to address residents’ mental health needs, which worsened and remain elevated after the hurricanes; and

**WHEREAS**, A brief of the study further states that: “The local governments in Puerto Rico and U.S. Virgin Islands would not be able to make up for lost federal funds and therefore would not be able to sustain current service levels. Some territory officials and providers described the potential effects of the funding expiration as “devastating,” “catastrophic,” and “scary.” Assuming a return to federal funding limited to the statutory cap and a 55 percent FMAP after remaining ACA funds expire, Puerto Rico could experience a shortfall of \$1 billion in FY 2020 and \$1.5 billion in FY 2021 (representing 36 percent and 52 percent of projected total spending, respectively) ... Federal shortfalls could reach \$31.3 million in the U.S. Virgin Islands, or 40 percent of program spending. U.S. Virgin Islands Medicaid officials assert that such shortfalls could put the 18,000 enrollees added under the ACA expansion at risk for loss of coverage (out of nearly 28,000 total enrollees)”; and

**WHEREAS**, KFF’s analysis shows that, for Puerto Rico, additional federal funding of \$2.8 billion in FY 2021 “could help address the projected shortfall (\$1.5 billion), increase the FMAP to 83%, and increase per member per month (PMPM) rates by 50% (an additional \$1.3 billion for the FMAP and PMPM increases). For U.S. Virgin Islands, KFF analysis shows that addressing the shortfall and raising the FMAP to 83% could provide \$45.9 million in federal funds, while additional funds could support an increase in the statutory cap”; and



**WHEREAS**, On July 9, 2019, Congressman Darren Soto introduced H.R. 3631 *Territories Health Care Improvement Act*, bipartisan legislation to provide equal access to federal resources for Medicaid to American citizens living in U.S. territories; and

**WHEREAS**, This bill increases the limit on Medicaid payments and the Federal Medical Assistance Percentage for the five U.S. territories:

- Puerto Rico: 83 percent for the first two years of additional funds, and 76 percent for the final two years;
- Guam, American Samoa, and CNMI: 100 percent for two years, 83 percent for three years, and 76 percent for one year;
- U.S. Virgin Islands: 100 percent for one year, 83 percent for four years, and 75 percent for one year; and

**WHEREAS**, It also implements integrity provisions, including a new asset verification system and payment error rate measurements, both already required for state Medicaid programs. In addition to report annually to Congress on the expenditures of increased Medicaid funds; and

**WHEREAS**, The bill was approved in the Markup Session of the House Energy and Commerce Subcommittee on Health, and forwarded to Full Committee on July 11, 2019; and

**WHEREAS**, This bill would prevent the Medicaid cliff that all the territories will face at the end of the ACA funds on September 2019; and

**WHEREAS**, CSG/ERC advocates for a permanent fix, H.R. 3631 would provide time for congressional leaders to work with Puerto Rico, the U.S. Virgin Islands, and the other island territories to develop a sustainable long-term funding structure for Medicaid that is comparable to what states receive;

**THEREFORE BE IT RESOLVED**, That CSG/ERC urges the U.S. House of Representatives and the U.S. Senate to approve this bill as forwarded by the House



## Eastern Regional Conference

THE COUNCIL OF STATE GOVERNMENTS

---

Energy and Commerce Subcommittee on Health so that the patients that would benefit from these funds are not affected; and

**THEREFORE BE IT FURTHER RESOLVED,** That copies of this resolution be forwarded to president of the United States, the vice president of the United States, and members of the United States Senate and the United States House of Representatives from CSG's Eastern Region.