

# **Report to Congress on Bipartisan Budget Act of 2018 – Title III – Section 20301: Hurricane Maria Relief for Puerto Rico and the Virgin Islands Medicaid Program**

**Progress toward implementing a Transformed Medicaid Statistical  
Information System and a Medicaid Fraud and Control Unit in  
Puerto Rico and the United States Virgin Islands.**

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## List of Acronyms

BBA	Bipartisan Budget Act of 2018
CMS	Centers for Medicare & Medicaid Services
DOJ	Department of Justice
HHS	Health and Human Services
MFCU	Medicaid Fraud Control Unit
MMIS	Medicaid Management Information System
NAMFCU	National Association of Medicaid Fraud Control Units
OIG	Office of Inspector General
PRDOH	Puerto Rico Department of Health
PRDOJ	Puerto Rico Department of Justice
T-MSIS	Transformed Medicaid Statistical Information System
USVI	United States Virgin Islands
USVI DOJ	USVI Department of Justice

## **Executive Summary**

### **Section 20301 of the Bipartisan Budget Act of 2018: Hurricane Maria Relief for Puerto Rico and the Virgin Islands Medicaid Programs**

On February 9, 2018, the President signed into law the Bipartisan Budget Act of 2018 (BBA), which includes Medicaid disaster relief funding for Puerto Rico and United States Virgin Islands (USVI). The BBA provides \$3.6 billion in additional Medicaid funding to Puerto Rico and approximately \$106.9 million in additional Medicaid funding to USVI for the period from January 1, 2018, through September 30, 2019. The law provides an additional \$1.2 billion to Puerto Rico and approximately \$35.6 million to USVI if the U.S. Department of Health and Human Services (HHS) Secretary certifies that each territory, respectively, has taken reasonable and appropriate steps to implement methods for collecting and reporting reliable data for Transformed Medicaid Statistical Information System (T-MSIS) and to demonstrate progress in establishing a Medicaid Fraud Control Unit (MFCU).

Puerto Rico and USVI expenditures of these additional BBA funds receive a federal match of 100 percent, notwithstanding the federal medical assistance percentage (FMAP) or other matching rate that otherwise would apply. Additionally, Puerto Rico and USVI may receive this funding before accessing other available allotment amounts. Puerto Rico and USVI expenditures in excess of the BBA funds are subject to standard federal matching rates (e.g., the FMAP applicable to the territories is 55 percent) and existing statutory spending caps.

The BBA also requires the Secretary of HHS to submit a report by July 1, 2018, to the House Energy and Commerce Committee and the Senate Finance Committee that describes the steps taken by Puerto Rico and USVI to meet the certification requirements to receive the additional funding conditioned upon efforts to implement T-MSIS and establish a MFCU, and specifies timelines for Puerto Rico and USVI to complete T-MSIS implementation and MFCU establishment activities. This report provides information as to the work performed by HHS agencies that collaborate with both Puerto Rico and the USVI to implement T-MSIS and establish a MFCU. The report also provides background focusing on the steps taken by Puerto Rico and the USVI to implement T-MSIS and establish a MFCU and the guidance and technical assistance provided by the federal agencies with responsibility for implementation and oversight of these programs. Specifically, the Centers for Medicare & Medicaid Services (CMS) and the Office of Inspector General (OIG) have provided and will continue to provide assistance to PR and USVI with the planning and implementation of these programs, as well as program oversight and potential compliance activities, where appropriate, for which each respective federal agency is responsible to ensure program compliance by the territories.

Finally, this report specifies milestones and timelines outlined by CMS and OIG for each territory, as a condition of eligibility for any additional increases in the amounts determined for Puerto Rico and the USVI, respectively, under section 1108(g) of the Social Security Act (the Act) (42 U.S.C. § 1308(g)) for payments under title XIX of the Act for fiscal year 2019, to complete (A) implementation of methods, satisfactory to the Secretary, for the collection and reporting of reliable data to the Transformed Medicaid Statistical Information System (T-MSIS)

(or a successor system); and (B) the establishment of a state Medicaid fraud control unit described in section 1903(q) of the Act (42 U.S.C. § 1396d(q)).

## **BACKGROUND**

To help aid Puerto Rico and the U.S. Virgin Islands (USVI) in their recovery from Hurricane Maria, Congress included targeted provisions in the Bipartisan Budget Act of 2018 (BBA). Section 20301 of the BBA provides Medicaid disaster relief funding to these territories, including \$3.6 billion in Medicaid funding to Puerto Rico and approximately \$106.9 million to USVI for the period from January 1, 2018, through September 30, 2019. The law also provides an additional \$1.2 billion to Puerto Rico and approximately \$35.6 million to USVI, if the Secretary of Health and Human Services (the Secretary) certifies that each territory has demonstrated reasonable and appropriate steps to implement methods for collecting and reporting reliable data for Transformed Medicaid Statistical Information System (T-MSIS) and has displayed progress towards establishing a Medicaid Fraud Control Unit (MFCU).<sup>1</sup>

The BBA also requires the Secretary to submit a report by July 1, 2018, to the House Energy and Commerce Committee and the Senate Finance Committee that outlines the steps taken by Puerto Rico and USVI to meet the certification requirements to receive the additional funding conditioned upon efforts to implement T-MSIS and establish a MFCU, and specifies timelines for Puerto Rico and USVI to complete T-MSIS implementation and MFCU establishment activities. This report highlights the work and collaboration between the Department of Health and Human Services (HHS) and both Puerto Rico and USVI to implement T-MSIS systems and establish MFCUs. Specifically, the report outlines the Centers for Medicare & Medicaid Services (CMS) and the HHS Office of Inspector General's (OIG's) work with Puerto Rico and USVI on the planning and implementation of these programs as well as program oversight to ensure compliance.

Finally, the report specifies milestones and timelines established by CMS and OIG that must be met by Puerto Rico and USVI, as a condition of eligibility for any additional increases in the amounts determined for Puerto Rico and the USVI, respectively, under section 1108(g) of the Social Security Act (the Act) (42 U.S.C. § 1308(g)) for payments under title XIX of the Act for fiscal year 2019, to complete implementation of T-MSIS and establishment of a MFCU.

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<sup>1</sup> Expenditures by Puerto Rico and USVI of these additional BBA funds are federally matched at 100 percent, and these territories may receive this funding before accessing other available allotment amounts. Puerto Rico and USVI expenditures in excess of the additional funds made available by the BBA are subject to standard federal matching rates (e.g., the federal medical assistance percentage applicable to the territories is 55 percent) and existing statutory spending caps.

## **TRANSFORMED MEDICAID STATISTICAL INFORMATION SYSTEM AND FUNDING APPROACH**

CMS has been working with states and territories to implement T-MSIS reporting capabilities. More robust, timely, and accurate data via T-MSIS will strengthen program monitoring, policy implementation and oversight of Medicaid and CHIP programs.

Puerto Rico has been submitting T-MSIS data to CMS since January 2018, and has met the T-MSIS requirements. As a result, CMS implemented a process that permits Puerto Rico to access 50 percent of the additional \$1.2 billion allotted to it in the BBA. Puerto Rico's timely T-MSIS compliance was achieved through a mitigation project designed with content contained in the existing Health Insurance Administration database.<sup>2</sup> The T-MSIS reports produced by this project were tested, approved, and certified by CMS from November 2017 through January 2018. This was achieved in record time for any state or territory.

Puerto Rico currently has plans to transition T-MSIS data submission from the currently approved mitigation plan to a T-MSIS submission that uses data from a new MMIS, which will be a successor system to the Health Insurance Administration database. A T-MSIS mitigation plan was adopted in 2017 with the purpose of prioritizing and expediting T-MSIS reporting for Puerto Rico. As part of this transition, Puerto Rico must continue to report data through the current T-MSIS mitigation plan while simultaneously working on a transition to a new T-MSIS reporting protocol. Once the transition is complete, the new system will provide CMS with enhanced data reporting through T-MSIS. Phase One of the new MMIS went live on March 26, 2018. Since then, Puerto Rico has been prioritizing the transition of T-MSIS reporting from the mitigation system to the new MMIS.

The new MMIS will give Puerto Rico the ability to provide inquiry capabilities; dashboard views; and generate reports of all kinds including standard reports, as-needed reports, and business intelligence reports, which make use of advanced intuitive data analysis. These capabilities will position the Puerto Rico Department of Health (PRDOH) to have available data essential to the implementation of a MFCU. Puerto Rico continues to work on the MMIS implementation and continues to meet all milestones in the Advanced Planning Documents (APD) approved by CMS for MMIS funding.

USVI's MMIS system is being designed and implemented by its contractor, Molina, which also designed West Virginia's MMIS system. This partnership allowed USVI to share and reuse technology and leverage West Virginia's existing software, hardware, operations environment, staffing, and subject matter experts. The USVI MMIS went live in August 2011, and was in full production on the first day of that implementation. Molina was initially contracted for operations through March 2016, with CMS approval, and subsequently USVI renewed that contract through 2022.

On February 27, 2018, USVI submitted a statement of work (SOW) for the development and implementation of T-MSIS. As of March 2018, USVI has T-MSIS development work in

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<sup>2</sup> The agencies responsible for the T-MSIS mitigation project are the Administracion de Seguros de Salud (ASES) and the Puerto Rico Department of Health (PRDOH), which have engaged contractors Milliman, Audacious Inquiry, and TistaTech. ASES' responsibilities include processing member, provider, and financial data, such as billing data, in a proprietary format and storing it in the Health Insurance Administration database.

progress, although implementation has been delayed due to infrastructure damage, operational difficulties (e.g., staffing disruptions), and financial issues caused by Hurricanes Maria and Irma. The additional funding provided through the BBA will allow the USVI to handle the financial demands of the T-MSIS project.

Currently, USVI is awaiting the completion of the T-MSIS code by Molina. Once completed, that functionality can be turned on for USVI and, once approved by CMS, T-MSIS compliance will be achieved.

#### *HHS Implemented Funding Approach*

Since January 2018, Puerto Rico has been submitting T-MSIS reports as required through a T-MSIS mitigation plan and process approved by CMS. Therefore, the criteria for measuring progress in implementing a T-MSIS data report is only applicable to USVI.

In order to receive 50 percent of the additional BBA Medicaid funds, USVI must accomplish the following:

- 1) Sign the SOW approval with Molina to initiate the work necessary to establish T-MSIS reporting, and Molina begins its work. This milestone has been completed.
- 2) Submit a project schedule including CMS critical milestones required to meet T-MSIS readiness. USVI must also implement a T-MSIS module that can generate test reports to submit to CMS for operational readiness reviews by September 30, 2018. This was completed by USVI and is under CMS review. Once CMS review completed, USVI will be approved to begin producing reports.
- 3) Receive CMS approval for the USVI T-MSIS reporting system and begin transmitting reports to CMS.

Once USVI completes milestones one and two above, 40 percent of the additional BBA funding will become available. USVI will then have access to 10 percent of the additional funding once it completes the third and final milestone.

#### **MEDICAID FRAUD CONTROL UNIT AND FUNDING APPROACH**

MFCUs are state-level agencies responsible for the investigation and prosecution of Medicaid provider fraud, as well as patient abuse or neglect in health care facilities, and board and care facilities. Under section 1902(a)(61) of the Act, states, including the territories, are required to operate a MFCU. A state can apply for a waiver if it can demonstrate that a MFCU would not be cost-effective because minimal fraud exists and beneficiaries are otherwise protected from abuse and neglect. Neither Puerto Rico nor USVI has such a waiver.

CMS and the OIG have provided technical support and assistance to the territories related to the establishment of a MFCU. CMS and OIG have:

- Convened meetings to outline the requirements of BBA and the statute, regulations and performance standards regarding establishment and operation of a MFCU;

- Provided examples of state MFCU legislation and applications to help guide Puerto Rico's and USVI's efforts to develop legislation and applications;
- Included representatives of the National Association of Medicaid Fraud Control Units (NAMFCU) and existing State MFCUs as part of technical assistance meetings; and
- Paid for travel and attendance for staff from both territories to attend a two-day training at the Medicaid Integrity Institute related to interactions between MFCUs and state Medicaid agency program integrity units.

Puerto Rico is working to establish a MFCU and has taken a number of significant steps towards implementation. On May 20, 2018, Governor Ricardo Rosselló Nevares introduced legislation before the Legislative Assembly to create a MFCU, and also introduced false claims legislation for consideration by the Assembly. On May 21, 2018, the Secretary of the Puerto Rico Department of Justice (PRDOJ) signed Administrative Order 2018-2, creating a MFCU within the PRDOJ. On June 11, 2018, the PRDOJ submitted a letter of intent to CMS, indicating that it had secured office space for a MFCU. The PRDOJ also has been meeting with the state Medicaid agency to develop a memorandum of understanding to develop policies and procedures related to the referral of potential fraud cases to the MFCU. Puerto Rico submitted the application for certification to the OIG on July 12, 2018.

USVI is committed to establishing a MFCU and has met the first milestone set by CMS. On May 18, 2018, the USVI Department of Justice (USVI DOJ) submitted draft legislation to establish a MFCU to the USVI legislature. Additionally, on June 5, 2018, the USVI DOJ sent, on behalf of the Governor, a letter of intent to CMS indicating that the USVI DOJ would submit to the OIG an application for certification of a MFCU to the OIG by July 12, 2018, which milestone it met. USVI projects that the MFCU will be operational on or before January 1, 2019.

### *HHS Funding Approach*

#### Puerto Rico

In order to receive the remaining 50 percent of the additional BBA funds, Puerto Rico must accomplish the following:

1. By June 12, 2018, Puerto Rico must submit a letter of intent to CMS and OIG indicating that it intends to establish a MFCU, including an implementation timeline committing the territory to meeting appropriate milestones. Puerto Rico submitted its letter of intent on June 11, 2018, thereby meeting this requirement.
2. By July 12, 2018, Puerto Rico must separately submit an application for certification for a MFCU, as well as the standard form 424, Application for Federal Assistance, to CMS and OIG. Puerto Rico submitted the application on July 12, 2018, thereby meeting this requirement.
3. By January 1, 2019, Puerto Rico must receive MFCU certification approval from the OIG.



As Puerto Rico has met milestones 1 and 2 above, 40 percent of the additional BBA funding is available. Puerto Rico will have access to the remaining 10 percent of the funding once it completes the third and final step.

### USVI

In order to receive the remaining 50 percent of the additional BBA funds, USVI must accomplish the following:

1. By June 12, 2018, USVI must submit a letter of intent to CMS and OIG indicating that it intends to establish a MFCU, including an implementation timeline committing the territory to meeting appropriate milestones. The USVI DOJ submitted a letter of intent on June 5, 2018, thereby meeting this requirement.
2. By July 12, 2018, USVI must separately submit an application for certification for a MFCU, as well as the standard form 424, Application for Federal Assistance, to CMS and OIG. USVI submitted the application on July 12, 2018, thereby meeting this requirement.
3. By January 1, 2019, USVI must receive MFCU certification approval from the OIG.

As USVI has met milestones 1 and 2 above, 40 percent of the additional BBA funding is available. USVI will then have access to the remaining 10 percent of the funding once it completes the third and final step.

### **SUMMARY OF STATUS**

As required by the BBA, upon meeting certain milestones satisfactory to CMS or the OIG, CMS released certain additional Medicaid funding to Puerto Rico and USVI per the criteria defined above. This will help ensure that both jurisdictions continue the work underway and make progress in meeting the remaining milestones.

At the time of this report, Puerto Rico has successfully met all the T-MSIS milestones. USVI is completing work to accomplish the second and third milestones by the deadlines set by CMS as described above in the HHS Implemented Funding approach section of the report. Both Puerto Rico and USVI have met the first and second MFCU milestones and are working to meet the third milestone.

From the work accomplished to date, both CMS and OIG are confident that there is a commitment from both Puerto Rico and USVI to meet the remaining milestones, leading to full implementation of a T-MSIS reporting system in USVI and a MFCU in both territories.

Milestone	USVI	Puerto Rico	HHS Action
<b>T-MSIS</b>			
Sign the SOW to initiate the work needed to establish T-MSIS reporting.	Completed	Completed	CMS will continue to work with USVI to complete the remaining two milestones. USVI must complete the second milestone to be eligible to receive additional BBA funds.
4) Submit a project schedule including CMS critical milestones required to meet T-MSIS readiness. Implement a T-MSIS module to generate test reports to submit to CMS for operational readiness reviews by September 30, 2018. This was completed by USVI and is under CMS review. Once CMS review completed, USVI will be approved to begin producing reports.	This work is ongoing.	Completed	Once USVI meets this milestone, 40 percent of the additional BBA funding will become available.
Receive CMS approval for their T-MSIS reporting system and begin transmitting data reports to CMS.	This work is ongoing.	Completed	Once USVI meets this milestone, another 10 percent of the BBA funds will become available. 50 percent of the additional BBA funding is available to Puerto Rico as they have met all the T-MSIS milestones.
<b>MFCU</b>			
Submit a letter of intent to establish a MFCU by June 12, 2018.	Completed	Completed	CMS and OIG will continue to work with Puerto Rico and USVI to complete the remaining milestones.
Submit an application for certification for a MFCU and an Application for Federal Assistance, to CMS and OIG by July 12, 2018.	Completed	Completed	This milestone has been met by both Puerto Rico and USVI. As milestone is met, 40 percent of the additional BBA funding is available to each territory.
Receive MFCU certification approval from the OIG by January 1, 2019.	OIG is reviewing the application.	OIG is reviewing the application.	Once Puerto Rico and USVI meet this milestone, another 10 percent of the BBA funds will become available to each territory.

## **APPENDIX A: HHS Program Administration – Roles and Responsibilities**

### **CMS Central Office**

The Center for Medicaid and CHIP Services (CMCS) is organized into six groups that are responsible for the various components of policy development and operations for Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program (BHP). CMCS also has an Innovation Accelerator Program (IAP) team dedicated to supporting innovation and enhancing partnerships with states.

### **CMS Regional Offices**

The CMS New York Regional Office is responsible for ongoing program and financial oversight of the Territories' enhanced allotment plan (EAP) activities, which is the Medicaid funding the Territories receive to cover dual eligible for Part D medications as the population is not eligible for the Low Income Subsidy (LIS). The Regional Office Division of Medicaid & Children's Health Operations (DMCHO) reviews and approves each EAP, including any amendments, and provides technical support and interpretation of relevant statute and regulation, in consultation with Central Office staff.

### **Center for Program Integrity**

The Center for Program Integrity is CMS' focal point for Medicaid program integrity including the establishment of MFCUs or approving waivers from the MFCU requirement.

### **Office Inspector General**

The Department of Health and Human Services Office of Inspector General is the designated Federal agency that oversees and annually approves Federal funding for MFCUs through a recertification process. OIG also conducts periodic onsite reviews of MFCUs to ensure compliance with federal requirements.

## **APPENDIX B: Puerto Rico and U.S. Virgin Islands Medicaid Program Administration – Roles and Responsibilities**

### **Puerto Rico**

In accordance with section 1902(a)(5) of Title XIX of the Social Security Act, and 42 CFR, part 430, the PRDOH, as stated in the Puerto Rico Medicaid Program State Plan, is the single state Medicaid agency. The single state agency, as certified by Puerto Rico Attorney General, has the legal authority to administer Title XIX State Plan and the Title XXI State Plan and make the rules and regulations that it follows. The PRDOH single state agency is responsible for the interpretation and observance of federal regulations whose implementation is mandated in order to receive federal financial participation (FFP).

The Administracion de Seguros de Salud (ASES), (Puerto Rico Health Insurance Administration (PRHIA)) is a public corporation with full autonomy created by Puerto Rico Law 72 on September 7, 1993. ASES is responsible for implementing, administering and negotiating a health insurance system, through contracts with health insurance underwriters, mental health organizations, pharmaceutical organization, third party administrators, Medicare advantage organizations, among others that provide all Island residents access to quality medical and hospital care, regardless of their financial condition and capacity to pay. ASES is the legal entity that carries out the provisions of Law Number 72 of September 7, 1993, negotiates and establishes reasonable health insurance premiums with the contracted health entities/insurers. The Puerto Rico DOJ is the executive department of the government of Puerto Rico responsible for the enforcement of Puerto Rican law and the administration of justice. The Department is headed by the Secretary of Justice of Puerto Rico who is appointed by the Governor. The Department, includes a structure of District Attorneys to handle criminal caseload, as well as specialized divisions to handle antitrust cases, general civil cases, public integrity (corruption) and federal litigation, among others. Puerto Rico has indicated the MFCU will be housed within their DOJ.

### **United States Virgin Islands**

The Bureau of Health Insurance and Medical Assistance is a part of the Department of Human Services of the USVI and is designated as the single state agency. The USVI Human Services Commissioner has the responsibilities for oversight of the Department of Bureau of Health Insurance and the Medicaid agency. This was confirmed by USVI Legislature and a State Plan Amendment was submitted to CMS and approved with an effective date of October 1, 2012 to name Human Services as the single state agency. The single state agency, as certified by USVI Attorney General, has the legal authority to administer Title XIX State Plan and the Title XXI State Plan and make the rules and regulations that it follows.

The USVI DOJ is administered under the general supervision and direction of the Attorney General of the USVI, who is appointed by the Governor with the advice and consent of the Legislature of the USVI. The Department, under the leadership of the Attorney General is tasked with the prosecution of all violations of the USVI Criminal Code and representing the Government of the USVI in all civil actions brought on behalf of or against the government. The USVI has indicated that the MFCU will be housed within their DOJ.