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Legislative History of Medicaid Financing for the Territories

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Legislative History of Medicaid Financing for the Territories

Medicaid is a joint federal-state program that finances the delivery of medical services for low-income individuals. The U.S. territories (i.e., American Samoa, the Commonwealth of the Northern Mariana Islands [CNMI], Guam, Puerto Rico, and the U.S. Virgin Islands [USVI]) operate Medicaid programs under rules that differ from those applicable to the 50 states and the District of Columbia (DC). Medicaid financing for the territories is different from Medicaid financing for the states and DC.

Funding

Federal Medicaid funding to the states and DC is open-ended, whereas Medicaid programs in the territories are subject to annual federal capped funding. Federal Medicaid funding for the territories has come from a few different sources, but the main source of federal Medicaid funding to the territories is the annual federal capped funding.

The annual federal capped Medicaid funding for the territories was supplemented by various funding sources from July 1, 2011, through December 31, 2019. During this period, most federal Medicaid funding for the territories was provided through the supplemental funding rather than through the annual federal capped funding. Since FY2020, after the supplemental Medicaid funding expired, the annual federal capped Medicaid funding amounts for the territories have been significantly increased, and the increased amounts are comparable to what the territories received from FY2011 to FY2019 through the combination of the annual federal capped funding and the supplemental Medicaid funding.

Currently, annual federal capped funding for Medicaid for American Samoa, CNMI, Guam, and USVI varies by territory and increases annually according to the change in the medical component of the Consumer Price Index for All Urban Consumers (CPI-U). The amount of Puerto Rico's annual federal capped Medicaid funding for FY2023 through FY2027 is specified in statute.

FMAP Rate

The federal share of most Medicaid expenditures is determined by the federal medical assistance percentage (FMAP) rate. The FMAP rates for the 50 states and DC are determined annually and vary by state according to each state's per capita income. The rates can range from 50% to 83%. By contrast, the FMAP rates for the territories have been set at 55% since July 1, 2011; this means each territory gets 55 cents back from the federal government for almost every dollar the territory spends on its Medicaid program, up to the federal funding limits.

For FY2020 through the beginning of FY2023 (i.e., through December 23, 2022), the FMAP rates for the territories were temporarily increased through a number of laws. For the beginning of FY2020 (i.e., October 1, 2019, through December 20, 2019), the FMAP rate for the territories was increased to 100% (i.e., fully federally funded) for all territories. Then, for the remainder of FY2020 (i.e., December 21, 2019, through September 30, 2020), FY2021, FY2022, and the beginning of FY2023 (i.e., October 1, 2022, through December 23, 2022), the regular FMAP rate for the territories was increased from 55% to 83% for American Samoa, CNMI, Guam, and USVI and from 55% to 76% for Puerto Rico. In December 2023, the Consolidated Appropriations Act, 2023 (P.L. 117-328), made permanent the 83% FMAP rate for American Samoa, CNMI, Guam, and USVI and extended the 76% FMAP rate for Puerto Rico through FY2027.

Puerto Rico vs. the Other Territories

Whereas annual federal capped funding for Medicaid and the FMAP rates for American Samoa, CNMI, Guam, and USVI are permanently set at increased levels, the Medicaid funding and FMAP rate for Puerto Rico are set to decrease starting in FY2028. Under current law, Puerto Rico is to receive a significant reduction in annual federal capped funding for Medicaid in FY2028 and subsequent years. In addition, Puerto Rico's FMAP rate is to revert back to 55% for FY2028 and subsequent years.

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Medicaid in the Territories Versus in the States

Medicaid is a joint federal-state program that finances the delivery of medical services for low-income individuals. The U.S. territories (i.e., American Samoa, the Commonwealth of the Northern Mariana Islands [CNMI], Guam, Puerto Rico, and the U.S. Virgin Islands [USVI]) operate Medicaid programs under rules that differ from those applicable to the 50 states and the District of Columbia (DC).

American Samoa and CNMI operate their Medicaid programs under the Section 1902(j) waiver authority. Under these waivers, the only Medicaid requirements that may not be waived are (1) the federal medical assistance percentage, or FMAP (i.e., the federal matching rate); (2) the annual federal capped funding; and (3) the requirement that Medicaid payments are for services otherwise coverable.

For Guam, Puerto Rico, and USVI, most eligibility and benefit requirements for the states apply. However, the Government Accountability Office (GAO) has documented that these three territories had not covered all of the federally mandated coverage groups or benefits.¹

Medicaid Financing

Medicaid financing for the territories differs from Medicaid financing for the states.² Federal Medicaid funding to the states and DC is open-ended, but the Medicaid programs in the territories are subject to annual federal capped funding. The FMAP rate for the territories is not determined using the FMAP formula used for the states and DC; instead, the FMAP rate for the territories is fixed.

Current Federal Funding for the Territories

The Medicaid programs in the territories are subject to annual federal capped funding.³ Currently, the annual federal capped funding for Medicaid for American Samoa, CNMI, Guam, and USVI varies by territory and increases annually according to the change in the medical component of the Consumer Price Index for All Urban Consumers (CPI-U). The amount of Puerto Rico's annual federal capped funding for Medicaid for FY2023 through FY2027 is specified in statute.⁴

For all the territories, once the cap is reached, the territories assume the full cost of Medicaid services. In some instances, after reaching the cap, territories may suspend services or cease payments to providers until the next fiscal year.⁵

Certain Medicaid expenditures are disregarded for purposes of the annual federal capped funding, such as (1) the Medicaid Electronic Health Record Incentive Program, (2) the design and operation of the claims and eligibility systems, and (3) services for citizens of freely associated

¹ U.S. Government Accountability Office (GAO), *Medicaid and CHIP: Increased Funding in U.S. Territories Merits Improved Program Integrity Efforts*, GAO-16-324, April 2016, at <https://www.gao.gov/assets/gao-16-324.pdf>.

² See CRS In Focus IF11012, *Medicaid Financing for the Territories*.

³ Social Security Act (SSA) §1108(f) and (g) (42 U.S.C. §1308(f) and (g)).

⁴ SSA §1108(g)(11) (42 U.S.C. §1308(g)).

⁵ In the past, when the territories exhausted their caps annually, some territories would suspend Medicaid coverage of services or would cease Medicaid payments to providers until the next fiscal year. (GAO, *U.S. Insular Areas: Multiple Factors Affect Federal Health Care Funding*, GAO-06-75, October 2005, at <https://www.gao.gov/assets/gao-06-75.pdf>.)

states.⁶ In addition, for Puerto Rico and USVI, Medicaid Fraud Control Unit (MFCU) expenditures are disregarded.⁷

The territories receive Section 1935(e) of the Social Security Act (SSA) funding in addition to the annual federal capped funding. Section 1935(e) funding is sometimes referred to as the *Enhanced Allotment Program* (EAP), and territories receive these funds in lieu of their residents being eligible for low-income subsidies under Medicare Part D. The territories can use this funding only to provide prescription drug coverage under Medicaid for low-income Medicare beneficiaries.

Current FMAP Rate for the Territories

The federal share of most Medicaid expenditures is determined by the FMAP rate.⁸ The FMAP rates for the 50 states and DC are determined annually and vary by state according to each state's per capita income. These are determined using a formula in statute, and the rates can range from 50% to 83%. By contrast, the FMAP rates for the territories have been set at a fixed rate in statute.

If the FMAP rates for the territories were calculated using the FMAP formula, they would be higher than the FMAP rates for most of the states. However, the FMAP formula uses per capita income data reported by the U.S. Department of Commerce's Bureau of Economic Analysis, and per capita income for the territories is not reported. With estimates using data from the 2010 census and the American Community Survey, the Medicaid and CHIP Payment and Access Commission estimated that American Samoa, CNMI, Guam, and Puerto Rico would likely receive the maximum FMAP rate of 83% and USVI would likely receive an FMAP rate ranging from 72% to 78%.⁹

The FMAP rate for American Samoa, CNMI, Guam, and USVI is set at 83%. This means that each of these four territories gets 83 cents back from the federal government for almost every dollar it spends on its Medicaid program, up to the federal funding limits.

Currently, the FMAP rate for Puerto Rico is temporarily increased from 55% to 76%. This temporary increase is set to end on September 30, 2027.

Because the federal Medicaid funding for the territories is capped, the amount of the fixed FMAP rate has implications for how quickly the territories spend through their annual federal capped funding. With a higher FMAP rate, the federal government is paying a higher share of Medicaid expenditures, which means the territories might spend through their annual federal capped funding more quickly.

⁶ SSA §1108(g)(4)(A) (42 U.S.C. §1308(g)(4)(A)) and SSA §1108(h) (42 U.S.C. §1308(h)).

⁷ SSA §1108(g)(4)(A) (42 U.S.C. §1308(g)(4)(A)).

⁸ The federal medical assistance percentage (FMAP) rate is used to reimburse states for the federal share of most Medicaid expenditures, but exceptions to the regular FMAP rate have been made for certain states, situations, populations, providers, and services. Some of these FMAP exceptions apply to the territories. For more information about FMAP exceptions, see CRS Report R43847, *Medicaid's Federal Medical Assistance Percentage (FMAP)*.

⁹ Medicaid and CHIP Payment and Access Commission, "Statement of Anne L. Schwartz, PhD Executive Director Medicaid and CHIP Payment and Access Commission Before the Health Subcommittee Committee on Energy and Commerce U.S. House of Representatives," March 17, 2021, at <https://www.congress.gov/117/meeting/house/111335/witnesses/HHRG-117-IF14-Wstate-SchwartzA-20210317.pdf>.

Legislative History of Medicaid Financing for the Territories

The federal Medicaid funding and FMAP rates for the territories have changed over time. Below are short summaries of the legislative history of the territories' (1) federal Medicaid funding and (2) the FMAP rate. These summaries are followed by descriptions of each law that has amended the federal Medicaid funding and the FMAP rates for the territories.

History of Federal Medicaid Funding

When Medicaid was established in 1965, the federal Medicaid funding for the territories was open-ended.¹⁰ The annual federal capped funding amounts for Medicaid were established in FY1968, and the amounts for the territories' annual federal capped funding were specified in statute in various laws through FY1994.¹¹ Starting in FY1995, the annual federal capped funding amounts for each territory were based off the previous year's amount, increased by the percentage increase in the medical component of the CPI-U. Since FY1995, the annual federal capped funding amounts for Medicaid have been increased periodically.

Prior to the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended), all five territories typically exhausted their annual federal capped for Medicaid funding before the end of the fiscal year. For this reason, the ACA included additional Medicaid federal funding for all of the territories. Certain territories received additional federal funding through the Consolidated Appropriations Act, 2017 (P.L. 115-31); the Bipartisan Budget Act of 2018 (P.L. 115-123); and the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20). All of these funds expired on either September 30, 2019, or December 31, 2019. Between July 1, 2011, and December 31, 2019, the territories received supplemental federal Medicaid funding totaling \$12.6 billion in addition to their annual federal capped Medicaid funding.

For FY2020 and FY2021, the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), as amended by the Family First Coronavirus Response Act (FFCRA; P.L. 116-127), significantly increased the annual federal capped Medicaid funding for Medicaid to the territories. The increases were comparable to what the territories received in recent years through the combination of the annual federal capped funding and the supplemental Medicaid funding.

For FY2022, the Centers for Medicare & Medicaid Services (CMS) construed the effect of the amendments that provided federal Medicaid funding to the territories in FY2020 and FY2021 as providing federal Medicaid funding to the territories comparable to the annual federal capped funding provided in either FY2020 (for Puerto Rico) or FY2021 (for the other territories). CMS

¹⁰ U.S. Congress, House Committee on Ways and Means, *President's Proposals for Revision in the Social Security System, Part 3*, 90th Cong., March and April 1967, p. 1650, at <https://congressional.proquest.com/congressional/docview/t29.d30.hrg-1967-wam-0007?accountid=12084>; U.S. Congress, House Committee on Appropriations, Subcommittee on Departments of Labor and Health, Education, and Welfare and Related Agencies Appropriations, *Departments of Labor and Health, Education and Welfare Appropriations for 1968, Part 3: Department of Health, Education and Welfare*, 90th Cong., March 1967, p. 934, at <https://congressional.proquest.com/congressional/docview/t29.d30.hrg-1967-hap-0039?accountid=12084>.

¹¹ In FY1968, annual federal capped funding amounts for Medicaid were provided to Guam, Puerto Rico, and the U.S. Virgin Islands (USVI). The Commonwealth of the Northern Mariana Islands (CNMI) and American Samoa received annual federal capped funding amounts for Medicaid beginning in FY1982 and FY1983, respectively.

informed each territory of its FY2022 Medicaid funding level through letters sent in September 2021.¹²

Table 1 shows the annual federal capped Medicaid funding amounts provided to each territory from FY1968 through FY2023.

Table 1. Annual Federal Capped Medicaid Funding Amounts, by Territory
FY1968-FY2023

Fiscal Year	American Samoa	Guam	CNMI	Puerto Rico	USVI
1968-1971	NA	\$900,000	NA	\$20,000,000	\$650,000
1972-1981	NA	900,000	NA	30,000,000	1,000,000
1982	NA	1,400,000	\$350,000	45,000,000	1,500,000
1983	\$750,000	1,400,000	350,000	45,000,000	1,500,000
1984-1987	1,150,000	2,000,000	550,000	63,400,000	2,100,000
1988	1,330,000	2,320,000	636,700	73,400,000	2,430,000
1989	1,390,000	2,410,000	693,350	76,200,000	2,515,000
1990-1993	1,450,000	2,500,000	750,000	79,000,000	2,600,000
1994	2,140,000	3,685,000	1,110,000	116,500,000	3,837,500
1995	2,240,000	3,870,000	1,160,000	122,200,000	4,030,000
1996	2,350,000	4,060,000	1,220,000	128,100,000	4,220,000
1997	2,440,000	4,210,000	1,270,000	133,000,000	4,380,000
1998	3,010,000	5,090,000	1,810,000	167,000,000	5,260,000
1999	3,090,000	5,230,000	1,860,000	171,500,000	5,400,000
2000	3,200,000	5,410,000	1,930,000	177,500,000	5,590,000
2001	3,320,000	5,620,000	2,010,000	184,400,000	5,810,000
2002	3,470,000	5,880,000	2,100,000	192,900,000	6,080,000
2003 ^a	3,727,000	6,321,000	2,255,000	207,341,000	6,537,000
2004 ^a	3,947,000	6,683,000	2,381,000	219,397,000	6,913,000
2005	3,950,000	6,690,000	2,380,000	219,600,000	6,920,000
2006	6,120,000	9,480,000	3,480,000	241,000,000	9,720,000
2007	8,290,000	12,270,000	4,580,000	250,400,000	12,520,000
2008	8,620,000	12,760,000	4,760,000	260,400,000	13,020,000
2009 ^b	11,726,000	17,355,000	6,474,000	354,120,000	17,706,000
2010 ^b	12,051,000	17,836,000	6,656,000	364,000,000	18,200,000
2011 ^b	11,784,500	17,444,000	6,504,750	355,985,000	17,799,250
2012	9,890,000	14,640,000	5,046,873	298,700,000	14,918,251

¹² Letter from Daniel Tsai, Deputy Administrator and Director of the Centers for Medicare & Medicaid Services (CMS) Centers for Medicaid & CHIP Services, to Edna Y. Marín-Ramos, Medicaid Director of Puerto Rico Medicaid Program, September 24, 2021, at <https://www.medicare.gov/allotment/downloads/ltr-to-med-agen-puerto-rico.pdf>.

Fiscal Year	American Samoa	Guam	CNMI	Puerto Rico	USVI
2013	10,240,000	15,150,000	5,086,061	309,200,000	15,844,130
2014	10,640,000	15,735,456	5,329,985	321,300,000	16,060,000
2015	10,900,000	16,116,448	5,742,999	329,000,000	16,409,192
2016	11,110,000	16,430,000	6,340,000	335,300,000	16,760,000
2017	11,510,000	17,020,000	6,340,000	347,400,000	17,360,000
2018	11,900,000	17,600,000	6,560,000	359,200,000	17,950,000
2019	12,150,000	17,970,000	6,700,000	366,700,000	18,330,000
2020	86,325,000	130,875,000	63,100,000	2,716,188,000	128,712,500
2021	85,550,000	129,712,500	62,325,000	2,809,063,000	127,937,500
2022 ^c	87,860,000	133,210,000	64,010,000	2,943,000,000	131,390,000
2023 ^d	90,410,000	137,070,000	65,870,000	3,275,000,000	135,200,000

Sources: For FY1968-FY1982, various laws. For FY1983-FY2011, communication with the Centers for Medicare & Medicaid Services (CMS) in May 2013. For FY2012-FY2019, communication with CMS in June 2019. For FY2020 and FY2021, the Family First Coronavirus Response Act (P.L. 116-127). For FY2022, letters from CMS to the territories: Letter from Daniel Tsai, Deputy Administrator and Director of CMS Centers for Medicaid & CHIP Services, to Edna Y. Marín-Ramos, Medicaid Director of Puerto Rico Medicaid Program, September 24, 2021, at <https://www.medicaid.gov/allotment/downloads/ltr-to-med-agen-puerto-rico.pdf>. For FY2023, Puerto Rico's funding is from Social Security Act §1108(g) and CRS estimated the funding for the other four territories. For FY2023, communication with CMS in April 2023.

Notes: CNMI = Commonwealth of the Northern Mariana Islands; NA = not applicable; USVI = U.S. Virgin Islands. These annual federal capped Medicaid funding amounts are not adjusted for inflation. Between July 1, 2011, and December 31, 2019, the territories received federal Medicaid funding totaling \$12.6 billion in addition to their annual federal capped Medicaid funding through a number of laws, including the Patient Protection and Affordable Care Act (P.L. 111-148, as amended); the Consolidated Appropriations Act, 2017 (P.L. 115-31); the Bipartisan Budget Act of 2018 (P.L. 115-123); and the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20).

- From the third calendar quarter of FY2003 through the third calendar quarter of FY2004, the territories' annual federal capped funding for Medicaid increased by 5.9% to accommodate a temporary federal medical assistance percentage (FMAP) increase of 2.95 percentage points provided to the 50 states, the District of Columbia, and the territories for fiscal relief. This increase was provided through the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27).
- For FY2009 through FY2011, each territory had the option of (1) an FMAP increase of 6.2 percentage points along with a 15% increase in the annual federal capped funding for Medicaid or (2) its regular FMAP rate along with a 30% increase in its annual federal capped Medicaid funding. All of the territories chose the 30% increase in the annual federal capped funding for Medicaid. This was part of the state fiscal relief provided in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).
- CMS informed each territory of its FY2022 Medicaid funding level through letters sent in September 2021, and a legal review conducted by the Government Accountability Office found Puerto Rico's annual federal capped funding amount was not authorized. (U.S. Government Accountability Office, *Department of Health and Human Services: Fiscal Year 2022 Medicaid Allotment for Puerto Rico*, B-333602, November 15, 2021, at <https://www.gao.gov/assets/b-333602.pdf>.)
- The FY2023 annual federal capped Medicaid funding for American Samoa, Guam, CNMI, and USVI is estimated by increasing the FY2022 amount by the increase in the medical care component of the Consumer Price Index for All Urban Consumers for the 12-month period ending in March 2022 (i.e., the March preceding the beginning of the fiscal year), rounded to the nearest \$10,000.

The Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43) included a provision for GAO to provide a legal review of the statutory language (i.e., the Social Security Act) on the most plausible plain reading of how the FY2022 annual federal capped

Medicaid funding levels for the territories should be calculated. GAO concluded that “section 1108(g) requires that ... [the Department of Health and Human Services (HHS)] base its calculation of the FY2022 allotment for Puerto Rico on the territory’s allotment for FY2019, rather than FY2020. Accordingly, HHS’s FY2022 allotment of \$2,943,000,000 for Puerto Rico was not authorized.” CMS sent a letter to Puerto Rico after GAO released the legal review contending that the agency accurately calculated Puerto Rico’s FY2022 funding amount.¹³

The Consolidated Appropriations Act, 2023 (CAA; P.L. 117-328), provides specific annual federal capped Medicaid funding amounts to Puerto Rico for FY2023 through FY2027. These amounts are comparable to the increased funding that has been provided in recent years. Under current law, the language specifies the annual federal capped Medicaid funding to Puerto Rico for FY2028 and subsequent fiscal years would result in a significant reduction in federal Medicaid funding for Puerto Rico.

History of the FMAP Rate

In the law establishing Medicaid, the territories were provided a fixed FMAP rate of 55%. That FMAP rate was reduced to 50% for FY1968 and subsequent years.¹⁴ The ACA increased the regular FMAP rates for the territories to 55% effective July 1, 2011. For FY2020 through the beginning of FY2023, FMAP rates for the territories were temporarily increased through a number of laws.

For the beginning of FY2020 (i.e., October 1, 2019, through December 20, 2019), the FMAP rate for the territories was increased to 100% (i.e., fully federally funded) for all territories. Then, for the remainder of FY2020 (i.e., December 21, 2019, through September 30, 2020), FY2021, FY2022, and the beginning of FY2023 (i.e., October 1, 2022, through December 23, 2022), the regular FMAP rate for the territories was increased from 55% to 83% for American Samoa, CNMI, Guam, and USVI and from 55% to 76% for Puerto Rico.¹⁵ The CAA made permanent the 83% FMAP rate for American Samoa, CNMI, Guam, and USVI and extended the 76% FMAP rate for Puerto Rico through FY2027.

Table 2 shows the regular FMAP rates for the territories in FY1966 through FY2028 under current law.

¹³ Letter from Daniel Tsai, Deputy Administrator and Director, CMS, Center for Medicaid & CHIP Services, to Edna Y. Marin-Ramos, Medicaid Director, Puerto Rico Medicaid Program, November 18, 2021, at <https://www.medicaid.gov/allotment/downloads/ltr-of-med-agen-puerto-rico-111821.pdf>.

¹⁴ For portions of FY2003 and FY2004, the FMAP rates for the territories were increased by 2.95 percentage points, along with the FMAP rates for the 50 states and the District of Columbia (DC), as part of temporary fiscal relief due to the recession.

¹⁵ Puerto Rico’s FMAP rate reverted to 55% for the period of December 4, 2021, through December 30, 2021.

**Table 2. Regular Federal Medical Assistance Percentage (FMAP)
Rate for the Territories**
FY1966-FY2028

Fiscal Year	Regular FMAP Rate	
	American Samoa, CNMI, Guam, and USVI	Puerto Rico
1966-1967	55%	55%
1968-2010	50%	50%
2011	50% (October 1, 2010-June 30, 2011)	50% (October 1, 2010-June 30, 2011)
	55% (July 1, 2011-September 30, 2011)	55% (July 1, 2011-September 30, 2011)
2012-2019	55%	55%
2020	100% (October 1, 2019-December 20, 2019)	100% (October 1, 2019-December 20, 2019)
	83% (December 21, 2019-September 30, 2020)	76% (December 21, 2019-September 30, 2020)
2021-2027	83%	76% ^a
2028	83%	55%

Source: Congressional Research Service analysis of multiple laws.

Notes: CNMI = Commonwealth of the Northern Mariana Islands; USVI = U.S. Virgin Islands. The regular FMAP rate is used to reimburse states for the federal share of most Medicaid expenditures, but exceptions to the regular FMAP rate have been made for certain states, situations, populations, providers, and services. Some of these FMAP exceptions apply to the territories.

From the third calendar quarter of FY2003 through the third calendar quarter of FY2004, the territories, along with the 50 states and the District of Columbia (DC), received a temporary FMAP increase of 2.95 percentage points for fiscal relief. This increase was provided through the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27).

From FY2018 through FY2020, some supplemental funding that certain territories received had an FMAP rate that was different from the regular FMAP rate. For all the supplemental federal Medicaid funding for Puerto Rico and USVI provided in the Bipartisan Budget Act of 2018 (P.L. 115-123), the FMAP was 100% (i.e., fully federally funded). For the supplemental funding CNMI received in the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20), the FMAP was 100%; the same law also provided a 100% FMAP rate for American Samoa and Guam for their remaining supplemental funding from the Patient Protection and Affordable Care Act (P.L. 111-148, as amended).

The Family First Coronavirus Response Act (FFCRA; P.L. 116-127) increased the FMAP rate for all states, DC, and the territories by 6.2 percentage points beginning January 1, 2020, and ending on December 31, 2023. The FFCRA FMAP increase phases down from April 1, 2023, through December 31, 2023, as follows: 5 percentage points (April 1, 2023-June 30, 2023), 2.5 percentage points (July 1, 2023-September 30, 2023), and 1.5 percentage points (October 1, 2023-December 31, 2023).

a. Puerto Rico's FMAP rate reverted to 55% for the period of December 4, 2021, through December 30, 2021.

Laws Amending Medicaid Financing for the Territories

Below are short descriptions of each law that has amended the Medicaid financing for the territories. These provisions include amendments to the annual federal capped funding (including disregards), supplemental federal Medicaid funding, and changes to the FMAP rate.

Social Security Amendments of 1965 (P.L. 89-97)

Title I, Part II, Section 121, of the Social Security Amendments of 1965, which established the Medicaid program, provided Puerto Rico, USVI, and Guam with an FMAP rate of 55% for Medicaid under SSA Section 1905(b) (42 U.S.C. §1396d(b)).

Social Security Amendments of 1967 (P.L. 90-248)

Title II, Part 4, Section 248(a), of the Social Security Amendments of 1967 added subsection (c) to SSA Section 1108(c) (42 U.S.C. §1308(c)).¹⁶ The added subsection provided annual federal capped funding specifically for Medicaid in the following amounts

- \$20 million for Puerto Rico;
- \$650,000 for USVI; and
- \$900,000 for Guam.

This funding was effective for fiscal years beginning after June 30, 1967.

Section 248(e) of the Social Security Amendments of 1967 reduced the FMAP rate for Puerto Rico, USVI, and Guam from 55% to 50% for quarters after 1967.

Social Security Amendments of 1972 (P.L. 92-603)

Title II, Section 271, of the Social Security Amendments of 1972 amended SSA Section 1108(c) (42 U.S.C. §1308(c)) to increase the annual federal capped Medicaid funding for Puerto Rico to \$30 million and for USVI to \$1 million. These increases were effective for fiscal years beginning after June 30, 1971.

Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35)

Subtitle C, Chapter 1, Section 2162(a)(2), of the Omnibus Budget Reconciliation Act of 1981 amended SSA 1905(b) (42 U.S.C. §1396d) to provide an FMAP rate of 50% for CNMI.

Section 2162(b) of the Omnibus Budget Reconciliation Act of 1981 amended SSA Section 1108(c) (42 U.S.C. §1308(c)) to increase the annual federal capped Medicaid funding for Puerto Rico to \$45 million, for USVI to \$1.5 million, and for Guam to \$1.4 million. In addition, the law added annual federal capped Medicaid funding for CNMI of \$350,000. All of these changes to the annual federal capped Medicaid funding were effective in FY1982.¹⁷

Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)

Title I, Part III, Subtitle B, Section 136(b), of the Tax Equity and Fiscal Responsibility Act of 1982 amended SSA Section 1108(c) (42 U.S.C. §1308(c)) to add annual federal capped Medicaid funding for American Samoa in the amount of \$750,000, effective on October 1, 1982.

Section 136(c) of the Tax Equity and Fiscal Responsibility Act of 1982 amended SSA 1905(b) (42 U.S.C. §1396d) to provide an FMAP rate of 50% for American Samoa.

¹⁶ The current-law SSA §1108(c) specifies the level of annual federal capped funding for cash assistance and certain other programs in the territories.

¹⁷ The federal fiscal year changed from July 1-June 30 to October 1-September 30 on October 1, 1976, for FY1977. This change was made in the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344).

Deficit Reduction Act of 1984 (P.L. 98-369)

Division B, Title III, Subtitle B, Section 2365, of the Deficit Reduction Act of 1984 amended SSA Section 1108(c) (42 U.S.C. §1308(c)) to increase the annual federal capped Medicaid funding for each territory to

- \$63.4 million for Puerto Rico;
- \$2.1 million for USVI;
- \$2.0 million for Guam;
- \$550,000 for CNMI; and
- \$1.2 million for American Samoa.

These funding increases were effective for fiscal years beginning on or after October 1, 1983.

Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203)

Title IV, Subtitle B, Part 2, Section 4111, of the Omnibus Budget Reconciliation Act of 1987 amended SSA Section 1108(c) (42 U.S.C. §1308(c)) to increase the annual federal capped Medicaid funding for the territories for FY1988, FY1989, and FY1990 and for succeeding fiscal years. The specific funding amounts for each territory are as follows

- \$73.4 million for FY1988; \$76.2 million for FY1989; \$79.0 million for FY1990 and each succeeding fiscal year for Puerto Rico;
- \$2.4 million for FY1988; \$2.5 million for FY1989; \$2.6 million for FY1990 and each succeeding fiscal year for USVI;
- \$2.3 million for FY1988; \$2.4 million for FY1989; \$2.5 million for FY1990 and each succeeding fiscal year for Guam;
- \$636,700 for FY1988; \$693,350 for FY1989; \$750,000 for FY1990 and each succeeding fiscal year for USVI; and
- \$1.3 million for FY1988; \$1.4 million for FY1989; \$1.450 million for FY1990 and each succeeding fiscal year for American Samoa.

Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66)

Title XIII, Chapter 2, Subchapter B, Part V, Section 13641, of the Omnibus Budget Reconciliation Act of 1993 amended SSA Section 1108(c) (42 U.S.C. §1308(c)) to increase the annual federal capped Medicaid funding for the territories for FY1994. The specific funding amounts for each territory are

- \$116.5 million for Puerto Rico;
- \$3.8 million for USVI;
- \$3.7 million for Guam;
- \$1.1 million for CNMI; and
- \$2.1 million for American Samoa.

For all fiscal years after FY1994, the Omnibus Budget Reconciliation Act of 1993 added an annual growth rate for the territories' annual federal capped Medicaid funding. For years starting with FY1995, the annual federal capped Medicaid funding amounts for the territories were calculated by increasing the preceding fiscal year's amount by the percentage increase in the medical care component of the CPI-U, as published by the Bureau of Labor Statistics, for the 12-

month period ending in March preceding the beginning of the fiscal year rounded to the nearest \$100,000 for Puerto Rico and \$10,000 for USVI, Guam, CNMI, and American Samoa.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)

Title I, Section 103(b)(2), of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 redesignated the citation for the territories' annual federal capped funding for Medicaid from SSA Section 1108 (42 U.S.C. §1308) subsection (c) to subsection (f).

Balanced Budget Act of 1997 (P.L. 105-33)

Title IV, Subtitle H, Chapter 3, Section 4726, of the Balanced Budget Act of 1997 added subsection (g) under SSA Section 1108 (42 U.S.C. §1308), which increased the territories' annual federal capped funding for Medicaid in FY1998 and subsequent years. For FY1998, the annual federal capped Medicaid funding amounts as calculated by prior law were increased by

- \$30 million for Puerto Rico;
- \$750,000 for USVI;
- \$750,000 for Guam;
- \$500,000 for CNMI; and
- \$500,000 for American Samoa.

For fiscal years after FY1998, the territories' annual federal capped Medicaid funding amounts were calculated by increasing the preceding fiscal year's amount by the percentage increase in the medical care component of the CPI-U, as published by the Bureau of Labor Statistics, for the 12-month period ending in March preceding the beginning of the fiscal year rounded to the nearest \$100,000 for Puerto Rico and \$10,000 for USVI, Guam, CNMI, and American Samoa.

Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27)

Title IV, Section 401(a), of the Jobs and Growth Tax Relief Reconciliation Act of 2003 provided temporary fiscal relief for the 50 states, DC, and the territories through a 2.95 percentage point increase in the FMAP rate from the third calendar quarter of FY2003 through the third calendar quarter of FY2004.

To accommodate this temporary FMAP increase, Section 401(a)(4) increased the territories' annual federal capped funding for Medicaid by 5.9% from the third calendar quarter of FY2003 through the third calendar quarter of FY2004.

Deficit Reduction Act of 2005 (P.L. 109-171)

Title VI, Subtitle A, Chapter 5, Section 6055, of the Deficit Reduction Act of 2005 amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to increase the territories' annual federal capped funding for Medicaid in FY2006 and FY2007. Specifically, the annual federal capped Medicaid funding amounts as calculated by prior law were increased by

- \$12.0 million in FY2006 and \$12.0 million in FY2007 for Puerto Rico;
- \$2.5 million in FY2006 and \$5.0 million in FY2007 for USVI;
- \$2.5 million in FY2006 and \$5.0 million in FY2007 for Guam;
- \$1.0 million in FY2006 and \$2.0 million in FY2007 for CNMI; and

- \$2.0 million in FY2006 and \$4.0 million in FY2007 for American Samoa.

The funding increases for FY2006 were not taken into account for calculating the territories' annual federal capped funding amounts for Medicaid prior to the application of the specified increase for FY2007. However, the funding increases were taken into account in calculating the annual federal capped funding amounts for Medicaid in FY2008 and subsequent years.

Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3)

Title I, Subtitle A, Section 109, of the Children's Health Insurance Program Reauthorization Act of 2009 amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to disregard certain Medicaid expenditures from the territories' annual federal capped funding limits for Medicaid beginning in FY2009. Specifically, it disregarded expenditures for (1) Medicaid Electronic Health Record Incentive Program and (2) the design and operation of the claims and eligibility systems.

American Recovery and Reinvestment Act of 2009 (P.L. 111-5 P.L. 111-5)

Division B, Title V, Section 5001(d), of the American Recovery and Reinvestment Act of 2009 provided each territory with the option of (1) an FMAP increase of 6.2 percentage points along with a 15% increase in the annual federal capped funding for Medicaid or (2) its regular FMAP rate along with a 30% increase in its annual federal capped Medicaid funding. All of the territories chose the 30% increase in the annual federal capped funding for Medicaid. This increase applied to FY2009 through FY2011.

Patient Protection and Affordable Care Act (P.L. 111-148, as amended by P.L. 111-152)

Title II, Subtitle A, Section 2005, of the ACA (as modified by Title X, Subtitle B, Part I, Section 10201, of the ACA and Title I, Subtitle C, Section 1204, of P.L. 111-152) amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to provide \$6.3 billion in additional Medicaid federal funding to the territories available between July 1, 2011, and September 30, 2019. The \$6.3 billion was distributed among the territories in an amount proportional to the annual federal capped Medicaid funding:

- \$5.5 billion for Puerto Rico,
- \$273.8 million for USVI,
- \$268.3 million for Guam,
- \$181.3 million for American Samoa, and
- \$100.1 million for CNMI.

In addition, Title I, Subtitle D, Part III, Section 1323, of the ACA (as modified by Section 1204(a) of P.L. 111-152) provided \$1.0 billion in additional Medicaid funding to the territories that did not establish health insurance exchanges. Because none of the territories established exchanges, the territories all received this additional federal Medicaid funding. The provision specified that Puerto Rico receive \$925 million, and the HHS Secretary distributed the remaining funding among the other four territories. This funding was available to the territories from January 1, 2014, through December 31, 2019.

Section 2005 of the ACA (as modified by Section 10201 of the ACA and Section 1204 of P.L. 111-152) amended SSA Section 1905(b) (42 U.S.C. §1396d(b)) to increase the FMAP rate for the territories from 50% to 55%, effective July 1, 2011.

Consolidated Appropriations Act, 2017 (P.L. 115-31)

Division M, Title II, Section 202(a)(1), of the Consolidated Appropriations Act, 2017, amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to disregard MFCU expenditures from Puerto Rico's annual federal capped funding limits for Medicaid beginning July 1, 2017.

Section 202(a)(1) provided Puerto Rico with \$295.9 million in additional federal Medicaid funding that was available through September 30, 2019.

Section 202(b) rescinded unobligated amounts available under ACA Section 1323(c)(1) (42 U.S.C. §18043(c)(1)), which is the \$1 billion in additional federal Medicaid funding to the territories in lieu of establishing health insurance exchanges.

Bipartisan Budget Act of 2018 (P.L. 115-123)

Division B, Subdivision 2, Title III, Section 20301(a), of the Bipartisan Budget Act of 2018 amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to provide additional federal Medicaid funding for Puerto Rico (\$3.6 billion) and USVI (\$106.9 million) for the period of January 1, 2018, through September 30, 2019. This funding was further increased by \$1.2 billion for Puerto Rico and \$35.6 million for USVI because the HHS Secretary certified that each territory took steps to (1) report reliable data to the Transformed-Medicaid Statistical Information System (T-MSIS) and (2) establish an MFCU. Section 20301(c) of the Bipartisan Budget Act of 2018 required the HHS Secretary to submit a report to Congress by July 1, 2018, that describes the steps taken by Puerto Rico and USVI to meet the certification requirements to receive the additional funding.¹⁸

Section 20301(a) of the Bipartisan Budget Act of 2018 increased the FMAP rate from 55% to 100% (i.e., fully federally funded) for the additional federal Medicaid funding for Puerto Rico and USVI provided in the act.

Section 20301(b) of the Bipartisan Budget Act of 2018 disregarded MFCU expenditures from USVI's annual federal capped funding limits for Medicaid beginning January 1, 2018.

Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20)

Title VIII, Section 802, of the Additional Supplemental Appropriations for Disaster Relief Act, 2019, amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to provide additional federal Medicaid funding for CNMI in the amount of \$36 million for the period of January 1, 2019, through September 30, 2019.

Section 802 increased the FMAP rate from 55% to 100% for CNMI for the additional federal Medicaid funding provided in the Additional Supplemental Appropriations for Disaster Relief Act, 2019. Also, for American Samoa and Guam, the Additional Supplemental Appropriations for Disaster Relief Act, 2019, increased the FMAP rate from 55% to 100% for the territories' share of the \$6.3 billion in additional Medicaid federal funding provided in the ACA.

¹⁸ Letter from Daniel R. Levinson, Inspector General, Department of Health and Human Services, to the Honorable Wanda Vázquez Garced, Attorney General, Department of Justice, December 18, 2018, at <https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/federal-disaster-resources/entry/49985>; HHS, *Report to Congress on Bipartisan Budget Act of 2018 – Title III – Section 20301: Hurricane Maria Relief for Puerto Rico and the U.S. Virgin Islands Medicaid Program*, at <https://www.medicaid.gov/state-resource-center/downloads/disaster-response/rpt-to-congress-hurricane-maria-relief-pr-usvi.pdf>.

Continuing Appropriations Act, 2020, and Health Extenders Act of 2019 (P.L. 116-59)

Division B, Title III, Section 1302, of the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019 added SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to increase the FMAP rate for territories from 55% to 100% (i.e., fully federally funded) for October 1, 2019, through November 21, 2019.

Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019 (P.L. 116-69)

Division B, Title III, Section 1302, of the Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019 amended SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to continue the 100% FMAP rate for territories from November 22, 2019, through December 20, 2019.

Further Consolidated Appropriations Act, 2020 (P.L. 116-94)

The Further Consolidated Appropriations Act, 2020, included a number of provisions impacting the Medicaid financing for the territories. These provisions (1) provided annual federal capped Medicaid funding for the territories; (2) amended the treatment of the Enhanced Allotment Program (EAP) funding with respect to the annual federal capped Medicaid funding; (3) provided increased FMAP rates to the territories, and (4) required territories to submit annual reports about access to health care.

202(a): Medicaid Funding for the Territories¹⁹

Division N, Title I, Subtitle B, Section 202(a), of the Further Consolidated Appropriations Act, 2020, amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to increase the annual federal capped Medicaid funding amounts for the territories in FY2020 and FY2021. The specific amounts of additional funding for each territory are

- \$2.6 billion in FY2020 and \$2.7 billion in FY2021 for Puerto Rico;
- \$126.0 million in each of FY2020 and FY2021 for USVI;
- \$127.0 million in each of FY2020 and FY2021 for Guam;
- \$60.0 million in each of FY2020 and FY2021 for CNMI; and
- \$84.0 million in each of FY2020 and FY2021 for American Samoa.

Section 202(a) of the Further Consolidated Appropriations Act, 2020, provided Puerto Rico an additional \$200 million in each of FY2020 and FY2021 if the HHS Secretary certified that Puerto Rico established a floor for Medicaid physician payment rates that was 70% of the Medicare Part B payment rate in Puerto Rico for those services.²⁰

¹⁹ Section 202(a) of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), also added program integrity requirements and the FMAP rate reductions that are discussed under “Section 202(c): Increased FMAP.”

²⁰ Puerto Rico implemented this payment increase in 2020. (Medicaid and CHIP Payment and Access Commission, “Medicaid and CHIP in the Territories,” fact sheet, February 2021, at <https://www.macpac.gov/wp-content/uploads/2019/07/Medicaid-and-CHIP-in-the-Territories.pdf>.)

Section 202(b): Treatment of Funding Under Enhanced Allotment Program

Section 202(b) of the Further Consolidated Appropriations Act, 2020, amended SSA Section 1935(e) (42 U.S.C. §1396u-5(e)) for the EAP funding for the territories to be taken into account in applying the annual federal capped Medicaid funding for each territory in FY2020 and FY2021.²¹

Section 202(c): Increased FMAP

Section 202(c) of the Further Consolidated Appropriations Act, 2020, amended SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to temporarily increase the regular FMAP rates for the territories for part of FY2020 (i.e., December 21, 2019, through September 30, 2020) and for FY2021. Specifically, the section increased the FMAP rate for American Samoa, CNMI, Guam, and USVI from 55% to 83% and the FMAP rate for Puerto Rico from 55% to 76%.

These increased FMAP rates for part of FY2020 and for FY2021 could have been reduced if the territories did not comply with certain program integrity requirements.²² All the territories were required to designate a program integrity lead. Puerto Rico also was required to publish (1) a plan to develop measures to satisfy the payment error rate measurement requirements; (2) a contracting reform plan to combat fraudulent, wasteful, or abusive Medicaid contracts; and (3) a plan to comply with the Medicaid eligibility quality control requirements.

Section 202(d): Annual Report

Section 202(d) of the Further Consolidated Appropriations Act, 2020, amended SSA Section 1108(g)(9) (42 U.S.C. §1308(g)(9)) to require the territories to submit annual reports to Congress no later than 30 days after the end of FY2020 and FY2021 to describe how the territories increased access to health care under Medicaid using the additional Medicaid funding provided in Section 202(a) and the increased FMAP rates provided in Section 202(c).

Families First Coronavirus Response Act (P.L. 116-27)²³

Division F, Section 6009, of the Family First Coronavirus Response Act amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to increase the annual federal capped Medicaid funding amounts for FY2020 and FY2021 to

- \$2.7 billion in FY2020 and \$2.8 billion in FY2021 for Puerto Rico;
- \$128.7 million in FY2020 and \$127.9 million in FY2021 for USVI;
\$130.9 million in FY2020 and \$129.7 million in FY2021 for Guam;
- \$63.1 million in FY2020 and \$62.3 million in FY2021 for CNMI;
- \$86.3 million for FY2020 and \$85.5 million for FY2021 for American Samoa.

²¹ Usually, the territories also receive SSA Section 1935(e) funding in addition to the annual federal capped Medicaid funding.

²² The program integrity requirements and the FMAP rate reductions were added under Section 202(a) of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).

²³ Division F, Section 6008, of the Family First Coronavirus Response Act (FFCRA; P.L. 116-127) provided a temporary FMAP rate increase for all states, DC, and the territories of 6.2 percentage points beginning January 1, 2020, and ending on the last day of the calendar quarter in which falls the last day of the Coronavirus Disease 2019 (COVID-19) pandemic public health emergency period. Section 5131 of the Consolidated Appropriations Act, 2023 (P.L. 117-328), amended Section 6008 of the FFCRA to end the FFCRA FMAP rate increase on December 31, 2023, and phased down the FFCRA FMAP rate increase from April 1, 2023, through December 31, 2023.

Consolidated Appropriations Act, 2021 (P.L. 116-260)

Division CC, Title II, Section 208, of the Consolidated Appropriations Act, 2021, added SSA Section 1108(h) (42 U.S.C. §1308(h)), which added expenditures for medical assistance provided to residents of freely associated states to the list of Medicaid expenditures that are disregarded for purposes of the annual federal capped funding.

Section 210 added Medicaid coverage of routine patient costs for items and services furnished in connection with participation in a qualifying clinical trial. Section 210 also amended SSA Section 1108(g)(4) (42 U.S.C. §1308(g)(4)) to disregard these Medicaid expenditures for the purposes of the annual federal capped funding.

American Rescue Plan Act of 2021 (P.L. 117-2)²⁴

Title IX, Subtitle J, Section 9811, of the American Rescue Plan Act of 2021 added SSA Section 1905(hh) (42 U.S.C. §1396d(hh)), which provided 100% federal reimbursement (i.e., fully federally funded) for Medicaid coverage and administration of Coronavirus Disease 2019 (COVID-19) vaccines during the COVID-19 public health emergency period.²⁵ For the territories, any Medicaid payments for the coverage of the COVID-19 vaccines that were subject to this FMAP rate increase were disregarded for purposes of the territories' annual federal capped funding for Medicaid.

Section 9814 added SSA Section 1905(ii) (42 U.S.C. §1396d(ii)), which provided a 5 percentage point increase to the regular FMAP rate for eight fiscal quarters for qualifying states that implement the ACA Medicaid expansion after the date of the American Rescue Plan Act of 2021's enactment (i.e., March 11, 2021). *Qualifying states* are states, including the territories, that have not expended amounts under Medicaid for all individuals in the expansion population prior to the date of enactment. For the territories, any Medicaid payments subject to this FMAP increase are disregarded for purposes of the territories' annual federal capped funding for Medicaid.²⁶

Section 9817 increased the FMAP rate of Medicaid expenditures by 10 percentage points for certain home- and community-based services (HCBS) for states that met the HCBS program requirements during the program-improvement period (i.e., April 1, 2021, through March 31, 2022). For the territories, any Medicaid payments subject to this FMAP increase were disregarded for purposes of the territories' annual federal capped funding for Medicaid.

Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43)

Division D, Title I, Section 3105(a), of the Extending Government Funding and Delivering Emergency Assistance Act amended SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to continue the

²⁴ For more information about these provisions, see CRS Report R46777, *American Rescue Plan Act of 2021 (P.L. 117-2): Private Health Insurance, Medicaid, CHIP, and Medicare Provisions*.

²⁵ This increased federal reimbursement began the first day of the first fiscal quarter after the date of the American Rescue Plan Act of 2021's (P.L. 117-2) enactment (i.e., April 1, 2021), and the increase ended the last day of the first fiscal quarter that began one year after the last day of the COVID-19 public health emergency period (i.e., May 11, 2023).

²⁶ All of the territories are considered to have implemented the ACA Medicaid expansion prior to the implementation of the American Rescue Plan Act of 2021 because they provided Medicaid coverage to certain childless adults. However, none of the territories provided Medicaid coverage to non-elderly adults up to 133% of the federal poverty level, which is the income eligibility level for the Medicaid expansion.

temporary increase of the regular FMAP rates for territories from October 1, 2021, through December 3, 2021. Specifically, the act continued the increase in the FMAP rate for American Samoa, CNMI, Guam, and USVI from 55% to 83% and the FMAP rate for Puerto Rico from 55% to 76%.

Section 3105(b) required the Government Accountability Office to review the determination of the FY2022 federal capped allotment funding provided to Puerto Rico and include the legal opinion of the Comptroller General on the most plausible plain reading of how such funding should be calculated. This review was due no later than November 15, 2021.

Further Extending Government Funding Act (P.L. 117-70)

Division C, Title I, Section 2104, of the Further Extending Government Funding Act amended SSA Section 1905(ff)(3) (42 U.S.C. §1396d(ff)(3)) to continue the temporary increase of the regular FMAP rates for American Samoa, CNMI, Guam, and USVI from December 4, 2021, through February 18, 2022. Specifically, it increased the FMAP rate for American Samoa, CNMI, Guam, and USVI from 55% to 83%.

Further Additional Extending Government Funding Act (P.L. 117-86)

Division B, Title I, Section 1104, of the Further Additional Extending Government Funding Act amended SSA Section 1905(ff)(3) (42 U.S.C. §1396d(ff)) to continue the temporary increase of the regular FMAP rates for American Samoa, CNMI, Guam, and USVI from February 19, 2022, through March 11, 2022. Specifically, it increased the FMAP rate for American Samoa, CNMI, Guam, and USVI from 55% to 83%.

Consolidated Appropriations Act, 2022 (P.L. 117-103)

Division P, Title II, Section 201, of the Consolidated Appropriations Act, 2022, amended SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to continue the temporary increase of the regular FMAP rates for American Samoa, CNMI, Guam, and USVI from March 12, 2022, through December 13, 2022. Specifically, it increased the FMAP rate for American Samoa, CNMI, Guam, and USVI from 55% to 83%.

Section 201 also temporarily increased the regular FMAP rate for Puerto Rico for January 1, 2022, through December 13, 2022. Specifically, it increased the FMAP rate for Puerto Rico from 55% to 76%.

In addition, Section 201 amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to provide an additional \$200 million for FY2022 if the HHS Secretary certified that Puerto Rico established a floor for Medicaid physician payment rates that was 70% of the Medicare Part B payment rate in Puerto Rico for those services. In certifying whether Puerto Rico had established the reimbursement floor under managed care for FY2022, the HHS Secretary was to disregard primary care case management payments. If the reimbursement floor was satisfied in a year in which the contract was entered into or renewed, the reimbursement floor was to be deemed to satisfy the requirement in subsequent fiscal years.

Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (P.L. 117-180)

Division D, Title I, Section 103, of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, amended SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to continue the

temporary increase of the regular FMAP rates for the territories from December 14, 2022, through December 16, 2022. Specifically, it increased the FMAP rate for American Samoa, CNMI, Guam, and USVI from 55% to 83% and the FMAP rate for Puerto Rico from 55% to 76%.

Further Continuing Appropriations and Extensions Act, 2023 (P.L. 117-229)

Division C, Title I, Section 103, of the Further Continuing Appropriations and Extensions Act, 2023, amended SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to continue the temporary increase of the regular FMAP rates for the territories from December 17, 2022, through December 23, 2022. Specifically, it increased the FMAP rate for American Samoa, CNMI, Guam, and USVI from 55% to 83% and the FMAP rate for Puerto Rico from 55% to 76%.

Consolidated Appropriations Act, 2023 (P.L. 117-328)

The Consolidated Appropriations Act, 2023 (CAA), includes a number of provisions impacting the Medicaid financing for the territories. These provisions (1) provided annual federal capped Medicaid funding for Puerto Rico; (2) applied the asset verification program requirements to Puerto Rico; (3) provided increased FMAP rates to the territories; (4) extended reporting requirements for the territories; and (5) added Medicaid data systems improvement payments to American Samoa, CNMI, Guam, and USVI.²⁷

5101(a). Revising Allotment for Puerto Rico

Section 5101(a) of the CAA amended SSA Section 1108(g) (42 U.S.C. §1308(g)) to provide specific amounts for Puerto Rico's annual federal capped Medicaid funding for FY2023 through FY2027. It also specified the annual federal capped Medicaid funding to Puerto Rico for FY2028 and subsequent fiscal years. In addition, Section 5101(a) provided Puerto Rico additional federal Medicaid funding (1) if Puerto Rico establishes a floor for Medicaid physician payment rates and (2) if certain program integrity conditions are met.

The specified annual federal capped Medicaid funding for Puerto Rico for FY2023 through FY2027 are

- \$3.275 billion for FY2023;
- \$3.325 billion for FY2024,
- \$3.475 billion for FY2025,
- \$3.645 billion for FY2026, and
- \$3.825 billion for FY2027.

For FY2028, the annual federal capped Medicaid funding for Puerto Rico is to be calculated without regard to the actual funding provided to Puerto Rico for FY2020 through FY2027. The language specifies how the FY2028 funding should be calculated. This calculation starts by establishing a hypothetical amount for FY2020 based on the actual annual federal capped Medicaid funding provided to Puerto Rico in FY2019 (i.e., \$367 million) increased by the medical care component of the CPI-U. Then, for each of FY2021 through FY2027, additional

²⁷ A couple subsections of the Consolidated Appropriations Act, 2023 (CAA; P.L. 117-328), Section 5101 are not summarized here because the provisions are not related to Medicaid financing. Section 5101(e) of the CAA added a contracting and procurement oversight lead requirement for Puerto Rico. Section 5101(g) of the CAA added a requirement for American Samoa, CNMI, Guam, and USVI to submit a four-year strategic plan to the HHS Secretary no later than September 30, 2023, and an analysis of that strategic plan no later than September 30, 2027.

hypothetical amounts are calculated by taking the hypothetical amount for the preceding fiscal year and increasing that amount by the medical care component of the CPI-U. This hypothetical amount for FY2027 is used to establish the actual FY2028 annual federal capped Medicaid funding for Puerto Rico by increasing the FY2027 amount by the medical care component of the CPI-U. This would result in a significant reduction in actual federal Medicaid funding for Puerto Rico from FY2027 to FY2028.

For FY2029 and subsequent years, the federal Medicaid funding for Puerto Rico is the actual amount specified for the preceding year increased by the medical care component of the CPI-U.

The provision specifies that the HHS Secretary may in no way take into account the actual federal Medicaid funding provided to Puerto Rico in FY2022 when determining the funding for Puerto Rico in FY2028 and FY2029.

For each fiscal year from FY2023 through FY2027, Puerto Rico can receive an additional \$300 million in federal Medicaid funding if Puerto Rico establishes a floor for Medicaid physician payment rates implemented through a directed payment arrangement that is 75% of the Medicare Part B rate in Puerto Rico for those services.²⁸ In certifying this reimbursement floor for FY2023, the HHS Secretary will consider the managed care contract entered into or renewed after the date of enactment. For subsequent fiscal years through FY2027, the HHS Secretary shall disregard payments made under sub-capitated arrangements for services such as primary care case management. In addition, if the reimbursement floor satisfies this requirement for a fiscal year in which the managed care contract is entered, then the reimbursement floor shall be deemed to satisfy the requirement for the subsequent fiscal year.

For FY2023 through FY2027, Puerto Rico can receive an additional increase in federal Medicaid funding of \$75 million if certain program integrity conditions are met. For FY2023 through FY2025, Puerto Rico is eligible for the additional \$75 million if the HHS Secretary determines that Puerto Rico has designated an officer (other than the Medicaid director) to serve as the Medicaid program integrity lead. For FY2026 and FY2027, Puerto Rico is eligible for the additional \$75 million if the HHS Secretary determines that Puerto Rico meets the same requirement for a Medicaid program integrity lead and the new contracting and procurement oversight lead requirement that is added by Section 5101(e).

These \$300 million and \$75 million in additional federal Medicaid funding for Puerto Rico may not be taken into account in calculating the annual federal capped Medicaid funding amounts for Puerto Rico for FY2023 and subsequent fiscal years.

5101(b). Extension of Increased FMAPs

Section 5101(b) of the CAA amended SSA Section 1905(ff) (42 U.S.C. §1396d(ff)) to make the 83% FMAP rate for American Samoa, CNMI, Guam, and USVI permanent and to extend the 76% FMAP rate for Puerto Rico through FY2027 (i.e., September 30, 2027).

²⁸ In general, states are not permitted to direct the expenditures of a Medicaid managed care plan under the contract between the state and the plan or to make payments to providers for services covered under the contract between the state and the plan. However, CMS permits state-directed payments that comply with certain requirements (42 C.F.R. §438.6(c)).

Section 5101(c). Application of Asset Verification Program Requirements to Puerto Rico

Section 5101(c) of the CAA amended SSA Section 1940 (42 U.S.C. §1396w) to require Puerto Rico to implement an asset verification program by January 1, 2026. If Puerto Rico does not have an asset verification program, starting January 1, 2026, the regular FMAP rate for Puerto Rico would be reduced by

- 0.12 percentage points for calendar quarters in FY2026 starting on or after January 1, 2026;
- 0.25 percentage points for calendar quarters in FY2027;
- 0.35 percentage points for calendar quarters in FY2028; and
- 0.50 percentage points for calendar quarters in FY2029 and each year thereafter.

Section 5101(d): Extension of Reporting Requirement

Section 5101(d) of the CAA amended SSA 1108(g)(9) (42 U.S.C. §1308(g)(9)) to extend the reporting requirements for the territories added by the Further Consolidated Appropriations Act, 2020, for FY2023 and subsequent years for American Samoa, CNMI, Guam, and USVI; in the case of Puerto Rico, the act extended the reporting requirement for FY2023 through FY2027.

Section 5101(f): Medicaid Data Systems Improvement Payments

Section 5101(f) of the CAA added subsection (i) to SSA 1108(g) (42 U.S.C. §1308) to provide funding to American Samoa, CNMI, Guam, and USVI for qualifying data system improvement expenditures incurred by such territory on or after October 1, 2023. The federal government is to pay 100% of these expenditures, and the expenditures are to be treated as though they are Medicaid payments. There should be no duplication of payment under Medicaid, the State Children’s Health Insurance Program (CHIP), or any other provision of law.

The total amount of payments for the data system improvements is not to exceed \$20 million. The HHS Secretary is to specify an allotment for each territory so that each eligible territory receives an equitable allotment. These data system improvement payments are not to be taken into account for purposes of the territories’ annual federal capped funding for Medicaid.

The qualifying data system improvement expenditures are for improving, updating, or enhancing a data system that is used by the eligible territories to carry out an administrative activity for which federal Medicaid funding is available under the Medicaid program.

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