

The Medicare Part D Low-Income Subsidy (LIS) in the U.S. Territory of Puerto Rico:
Current Law and Recommendations

Since its inception, the Medicare Part D Low-Income Subsidy (LIS) program has enabled millions of low-income elderly and disabled individuals in the fifty States and District of Columbia access to prescription medicine that they otherwise could not afford.

Puerto Rico produces more prescription drugs used in the U.S. than any State or U.S. trading partner worldwide, and yet residents of Puerto Rico and the U.S.' four less populated territories are not eligible for the LIS program. At the same time, drug companies based in the States save billions of dollars in Federal taxes in Puerto Rico yearly by partially manufacturing products there through foreign subsidiaries ("Controlled Foreign Corporations" or "CFCs"). Of more than \$90 billion a year in sales of Puerto Rico CFCs, which are primarily medical products, about \$35 billion is taxed, and the tax is half the rate paid on income attributed to the States.

Americans of the territories were initially overlooked when the LIS legislation was developed. Territorial governments were then provided with very small grants to establish their own programs for serving these fellow Americans. The bill did that through Enhanced Medicaid Allotments (EMA).

The EMA grants are subject to matching the Federal Medical Assistance Percentages (FMAP) for territories, fixed in law at 55%. In addition, however, overall Medicaid spending in the territories is subject to a dollar cap on funding, so the effective federal contribution in Puerto

Rico is about 13%. If Puerto Rico were a State, its FMAP would be 83% and grants would be based on need in addition to local matching, not spending caps.

Puerto Rico has often not drawn down all of its Part D Medicaid allotment because the FMAP for Medicaid is so high. In Fiscal Years (FYs) 2010-16, the territory was eligible to receive from \$42.36 million to \$49.34 million in Medicare Part D increased Medicaid funding, but it was able to fully match the grants only in FY10. In Fiscal Year 2015, Puerto Rico accessed just \$9.24 million of available Federal funds. This loss of funding contributes to a public health crisis as patients lack access to needed medical care.

One solution is for individual low-income, elderly Americans of the territory to relocate to a State. Between 2010 and 2018, the territory's population decreased from 3.726 million to 3.195 million due to migration to the States, where Puerto Ricans, U.S. citizens by birth, are treated equally with their fellow citizens in both the Medicare and Medicaid programs. More than 60% of all citizens of Puerto Rican heritage now live in a State. In cost-share programs such as Medicaid, this imposes costs on the States as well as on the Federal government.

The consequent reduction in population in the islands has also contributed to a weakened economy and budget in Puerto Rico. Decades of multi-billion dollar underfunding in Federal health programs in Puerto Rico is a major cause of the territory's economic depression and its local government's budget and debt deficiency, which has resulted in bankruptcy.

The territorial government initially tried to cope through borrowing. Bonds were issued to pay for a share of Medicaid that the Federal government would pay for in any State. The excessive debt led to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA),

which has resulted in bond and bond fund losses by countless citizens in the States as well as citizens and institutions in the territory.

The Puerto Rico Statehood Council (PRSC) appreciates the Committees' solicitation for comments to improve the Medicare Part D program and LIS in particular. In recognition of the economic, public health and fairness issues set forth above, PRSC urges the full inclusion of Puerto Rico in the Medicare Part D LIS program.

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The Puerto Rico Statehood Council is a 501(c)(4) organization that endorses equal treatment of the U.S. territory of Puerto Rico – equal rights and equal responsibilities - under Federal law.