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Congress of the United States
House of Representatives
Washington, DC 20515–5400

June 6, 2019

Hon. Richard E. Neal
Chairman
COMMITTEE ON WAYS & MEANS
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

Hon. Frank Pallone, Jr.
Chairman
COMMITTEE ON ENERGY AND COMMERCE
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Kevin Brady
Ranking Member
COMMITTEE ON WAYS & MEANS
U.S. House of Representatives
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Hon. Greg Walden
Ranking Member
COMMITTEE ON WAYS & MEANS
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen Neal and Pallone, and Ranking Members Brady and Walden:

I am writing in response to your request for comments on your draft bill to reform and improve the Medicare Part D prescription drug program.

My comment is that the bill should be amended to extend the program to your fellow Americans who reside in Puerto Rico as it applies to our fellow citizens who live in the States and of the District of Columbia.

As you know, under Part D, Medicare provides a low-income subsidy (LIS) for prescription drugs to enrollees in the States and the District of Columbia with incomes up to 150 percent of the Poverty Level. Dual-eligible beneficiaries who qualify for Medicaid based on income and assets are automatically deemed eligible for Part D low-income subsidies, as are individuals who receive premium and/or cost-sharing assistance from Medicaid through the Medicare Savings Program (MSP)[1] or Supplemental Security Income (SSI) cash assistance.

[1] The Medicare Savings Program includes the Qualified Medicare Beneficiary (QMB) program, Specified Low-Income Medicare Beneficiary (SLMB) program, and Qualifying Individual (QI) program. These programs help Medicare beneficiaries of modest means pay all or some of Medicare's cost-sharing amounts (i.e., premiums, deductibles, and co-payments).

LIS cost sharing varies based on income and assets.[2] Beneficiaries eligible for the full Part D subsidy have no annual deductible and minimal cost sharing. In addition, beneficiaries who qualify for a full subsidy do not pay monthly premiums if they enroll in lower-cost plans that offer basic Part D coverage and charge premiums equal to, or below, a regional benchmark. Partial subsidy-eligible individuals have higher cost sharing and receive premium assistance based on an income sliding scale.

Residents of Puerto Rico and the United States' four other territories, however, are not eligible for the LIS.[3] Instead, territorial governments are allotted a fixed amount of funding through grants pursuant to Section 1935(e) of the Social Security Act, to provide prescription drug assistance to low-income Medicare beneficiaries, in other words, only for dually eligible beneficiaries. This was done through Medicaid instead of Medicare and is called the Enhanced Allotment Program (EAP). Currently, annual EAP funding to Puerto Rico is $59 million.

There are several problems with this. The most fundamental one is that ***the funding is substantially less than the aggregate amount that low-income Medicare beneficiaries in Puerto Rico would receive if eligible for the LIS. This means that the impoverished elderly and disabled living in Puerto Rico receive far less prescription drug assistance than their fellow citizens in the States and DC.***

Further, providing the funding through the Medicaid program requires the territorial government to match the grant at its regular Federal Medicaid Medical Assistance Percentage (FMAP) rate. The FMAP for Puerto Rico is fixed by statute at 55%,[4]which

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[2] Cost sharing is linked to a Part D standard benefit. Under the standard benefit, an enrollee first pays a deductible ($415 in 2019). After the deductible has been met, the beneficiary is responsible for 25% of the cost of prescription drugs (with the plan covering the remaining 75%) up to the initial coverage limit ($3,820 in 2019). After the initial coverage threshold has been reached, a beneficiary enters the coverage gap, or "doughnut hole," and is responsible for a larger share of prescription drugs costs until he or she reaches the catastrophic threshold, which is about $8,139.54 in total drug costs in 2019. Most Part D plans modify this standard benefit by using different cost-sharing requirements, such as altering the size of deductibles or co-payments. All Part D plans must be at least actuarially equivalent to the standard benefit.

[3] Residents of Puerto Rico are also ineligible for any of the MSP and for SSI.

[4] The statutory FMAP rate applicable to Puerto Rico of 55% bears no relation to the formula used to determine the FMAP applicable to the States, based on average per capita income for each State relative to the national average. To put this in perspective, according to the U.S. Census, Puerto Rico's average per capita income was $12,081, whereas the national average for 2018 was $53,712. The applicable FMPA for Mississippi, the State with the lowest average per capital income of $37,994, is 77%. If the FMAP formula were used, Puerto Rico's FMAP would be 83%.

means that, for every dollar Puerto Rico spends on providing Medicaid coverage for prescription drugs to low-income Medicare beneficiaries, the territory draws down 55 cents from its allotted Section 1935(e) funding, up to the annual limit, and is responsible for the remaining 45 cents. The matching requirement for prescription drug benefits is not imposed upon the States or the District of Columbia.

Because of the local match requirement, Puerto Rico has regularly struggled to draw down EAP funding, often leaving much of the funding unused despite a significant need for it. For example, between Fiscal Year 2011 and Fiscal Year 2016, Puerto Rico was able to draw down only about 42% of its EAP funding, ranging from as low as 21% in 2015 to as much as 58% in 2016.[5] Therefore, the federal funding available for prescription drug benefits for dually-eligible beneficiaries is substantially less than that available to dually-eligible beneficiaries living elsewhere in the United States.
Moreover, because the coverage of prescription drugs is provided through Puerto Rico's Medicaid program, Medicare beneficiaries who are ineligible for Medicaid are ineligible for any assistance.

Because of inadequate Federal Medicaid funding, Puerto Rico only covers individuals with modified adjusted gross incomes up approximately 40% of the Federal Poverty Level. This leaves all Medicare beneficiaries in Puerto Rico with incomes between 41% and 150% of the Federal Poverty Level without any prescription drug assistance. In 2018, 43 million Medicare beneficiaries were enrolled in Medicare Part D plans, leaving only about 12.5% eligible beneficiaries without some source of drug coverage. According to CMS, however, last month, *28% of eligible Medicare beneficiaries in Puerto Rico were not enrolled in a prescription drug program.*

The *Puerto Rico Health Care Infrastructure Assessment,* published in January 2017 by The Urban Institute's Health Policy Center, noted rising concerns regarding prescription drug adherence, especially among Medicare enrollees in Puerto Rico who are ineligible for LIS. Without this financial assistance, many low-income Medicare beneficiaries have trouble affording prescription medication.[6] As a result, Medicare enrollees often split pills, spread out dosages, or skip prescribed medication altogether, according to some respondents.

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[5] *See* CONGRESSIONAL TASK FORCE ON ECONOMIC GROWTH IN PUERTO RICO REPORT TO THE HOUSE AND SENATE dated December 20, 2016, p. 27, available at https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Task%20Force%20on%20Economic%20Growth%20in%20Puerto%20Rico%20Releases%20Final%20Report.pdf

[6] Part D supplements in Puerto Rico typically require the payment of deductibles, copays, and coinsurance. Moreover, even dually eligible beneficiaries who are not subject to deductibles are required to make copayments and coinsurance because of their prescription medication is subsidized with EAP, not with LIS.

Medicare Part D was enacted in response to the pernicious effects that rising drug prices were having on our most vulnerable population, our senior and disabled citizens. It was enacted to make sure that the rising costs of prescription drugs would not make healthcare a privilege of the wealthy, but that it would continue to be accessible to all hard-working Americans, despite their economic status at their old age.

President George W. Bush called the reforms that became Medicare Part D, "the act of a vibrant and compassionate government [showing] concern for the dignity of our seniors by giving them quality healthcare;" he referred to it as "a victory for all of America's seniors." But it is evident that this victory has not reached our senior citizens who call Puerto Rico their home, who are too poor by everyone's standards, but not poor enough by Federal standards, to share in this victory.

Attached is a draft of the *Territories Medicare Prescription Drug Assistance Equality Act of 2019*, which I will be filing in order to make premium and cost-sharing subsidies available to low-income Medicare Part D beneficiaries who reside in Puerto Rico and the other U.S. territories. I hope that you consider amending your Medicare Part D bill to add these provisions and start providing to some Americans the benefits you are now seeking to expand.

I am at your disposal to meet with you and discuss this matter further at your convenience.

Regards,

Jenniffer A. González Colón
Member of Congress (PR-AL)

Attachment

[114H4163]

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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To amend titles XVIII and XIX of the Social Security Act to make premium and cost-sharing subsidies available to low-income Medicare part D beneficiaries who reside in Puerto Rico or another territory of the United States.

IN THE HOUSE OF REPRESENTATIVES

Miss GONZÁLEZ-COLÓN of Puerto Rico introduced the following bill; which was referred to the Committee on _____

A BILL

To amend titles XVIII and XIX of the Social Security Act to make premium and cost-sharing subsidies available to low-income Medicare part D beneficiaries who reside in Puerto Rico or another territory of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Territories Medicare Prescription Drug Assistance Equality Act of 2019".

SEC. 2. EQUAL TREATMENT OF RESIDENTS OF TERRITORIES IN PREMIUM AND COST-SHARING SUBSIDIES UNDER MEDICARE PRESCRIPTION DRUG PROGRAM.

(a) MEDICARE ASSISTANCE.—Section 1860D–14(a)(3) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking "subject to subparagraph (F),";

(2) in subparagraph (B)(v), in the matter preceding subclause (I), by striking "Subject to subparagraph (F), the Secretary" and inserting "The Secretary";

(3) in subparagraph (C), by adding at the end the following new sentence: "In the case of an individual who is not a resident of the 50 States or the District of Columbia, the poverty line (as such term is defined in clause (ii)) that shall apply to such individual shall be the poverty line for the 48 contiguous States and the District of Columbia."; and

(4) by striking subparagraph (F).

(b) MEDICAID ASSISTANCE.—Section 1935 of the Social Security Act (42 U.S.C. 1396u–5) is amended—

(1) in subsection (c)(1)(A)—

(A) by inserting "(and each other State for each month beginning with January 2020)" after "January 2006"; and

(B) in clause (i), by inserting "or (2)(B) (as the case may be)" after "paragraph (2)(A)";

(2) in subsection (c)(2)—

(A) in subparagraph (A)—

(i) by amending the heading to read as follows: "COMPUTATION FOR 50 STATES AND THE DISTRICT OF COLUMBIA"; and

(ii) by striking "a State described in paragraph (1)" and inserting "one of the 50 States or the District of Columbia";

(B) in subparagraph (B)—

(i) by striking "subparagraph (A)" and inserting "subparagraph (A) or (B) (as the case may be)"; and

(ii) by redesignating such subparagraph as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B) COMPUTATION FOR TERRITORIES.—The amount computed under this paragraph for a State not described in subparagraph (A) and

for a month in a year (beginning with 2020) is equal to—

"(i) 1/12 of the product of—

"(I) the amount determined under subsection (e) for the State for 2019; and

"(II) 100 percent minus the highest possible Federal medical assistance percentage that may be applied to any of the 50 States for fiscal year 2018 under section 1905(b)(1); and

"(ii) increased for each year (beginning with 2019 up to and including the year involved) by the applicable growth factor specified in paragraph (4) for that year."; and

(3) in subsection (e)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "of such State; and" and inserting "of such State for years before 2020;";

(ii) in subparagraph (B)—

(I) by inserting "for periods before January 1, 2020" after "(B)"; and

(II) by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following new subparagraph:

"(C) for the first 3 quarters of fiscal year 2020 and for each subsequent fiscal year, the amount otherwise applied under section 1108(f) for the State shall be increased by the amount specified in paragraph (4)(A) for such period or fiscal year.";

(B) in paragraph (2), by striking "The Secretary" and inserting "For periods before January 2020, the Secretary";

(C) in paragraph (3)—

(i) in the heading, by inserting "BEFORE SECOND QUARTER OF FISCAL YEAR 2020" after "INCREASED AMOUNT";

(ii) in subparagraph (A)—

(I) in the matter before clause (i), by inserting "or other fiscal period" after "for a year"; and

(II) in clause (i), by inserting "for such year or period" after "subparagraph (B)"; and

(iii) in subparagraph (B)—

(I) in clause (ii), by striking "or" at the end;

(II) in clause (iii), by striking "a subsequent year" and inserting "a subsequent fiscal year (before the second quarter of fiscal year 2020)";

(III) in clause (iii), by striking the period at the end and inserting "; and"; and

(IV) by adding at the end the following:

"(iv) for the first quarter of fiscal year 2020, is equal to 25 percent of the aggregate amount specified in this subparagraph for the previous fiscal year increased by the annual percentage increase specified in section 1860D–2(b)(6) for the year involved.";

(D) by striking paragraph (4); and

(E) by inserting after paragraph (3) the following new paragraph:

"(4) INCREASED AMOUNT BEGINNING WITH SECOND QUARTER OF FISCAL YEAR 2020.—

"(A) IN GENERAL.—The amount specified in this paragraph for a State for the last 3 quarters of fiscal year 2020 or for a subsequent fiscal year is equal to the product of—

"(i) the aggregate amount specified in subparagraph (B) for such period or fiscal year; and

"(ii) the ratio (as estimated by the Secretary) of—

"(I) the number of individuals who are entitled to benefits under part A or enrolled under part B and who reside in the State (as determined by the Secretary based on the most recent available data before the beginning of the period or year); to

"(II) the sum of such numbers for all States that are subject to this subsection.

"(B) AGGREGATE AMOUNT.—The aggregate amount specified in this subparagraph for—

"(i) the last 3 quarters of fiscal year 2020, is equal to 3 times the amount specified in paragraph (3)(B)(iv);

"(ii) fiscal year 2021, is equal to 4 times the amount specified in paragraph (3)(B)(iv) increased by the same annual percentage increase as is applied to increases in the amounts applied for the fiscal year and State under section 1108(f); or

"(iii) a subsequent fiscal year, is equal to the aggregate amount specified in this subparagraph for the previous fiscal year increased by the same annual percentage increase as is applied for the fiscal year and State under section 1108(f).".

(c) CONFORMING AMENDMENT.—Section 1108(f) of the Social Security Act (42 U.S.C. 1308(f)) is amended by striking "1935(e)(1)(B)" and inserting "1935(e)(1)".

(d) EFFECTIVE DATES.—The amendments made by subsection (a) shall take effect on January 1, 2020, and the amendments made by subsections (b) and (c) shall take effect on the date of the enactment of this Act.