



GOVERNOR OF PUERTO RICO
Pedro R. Pierluisi

March 7, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: CMS-2022-0010; Advance Notice of Methodological Changes for CY 2024 for MA Capitation Rates and Part C and Part D Payment Policies

Dear Secretary Becerra:

I would like to express my sincere appreciation for your steadfast leadership in support of health equity throughout our Nation. In the case of Puerto Rico, President Biden has promised to address healthcare inequities on the Island and enhance our Medicare Advantage (MA) program, as stated in the Biden-Harris Plan for Recovery, Renewal and Respect for Puerto Rico issued in 2020. This document affirmed that the Biden Administration "will address historically low [MA] payment rates and their consequences to Puerto Rico's health system by directing the HHS Secretary to develop and recommend payment reforms and enhancements to the program".

I know first-hand of your commitment to help Puerto Rico's American citizens have access to adequate medical services, which has included increased funding to our Medicaid program. I applaud your steadfast support and know you are committed to executing President Biden's plan to implement administrative fixes to enhance the longstanding and rapidly growing MA funding inequities for Puerto Rico, relative to the rest of the United States.

After carefully reviewing the proposed language of the **Advance Notice of Methodological Changes for CY 2024 for MA Capitation Rates and Part C and Part D Payment Policies** (Advance Notice) released on February 1, 2023, I am deeply concerned that it is inconsistent with the Biden Administration's proposals for a permanent fix to the already aggravating disparity in MA rates for the island (see attached graph).



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In fact, if implemented, the Advance Notice would further exacerbate the disparities by effectively imposing the largest federal healthcare funding cut in Puerto Rico's history. Managed Care Organizations (MCO's) have estimated that the reduction would be over \$800M from 2023 to 2024, more than negating the recent funding gains achieved on the Medicaid program. A reduction of this magnitude would dramatically impact Puerto Rico's entire healthcare system and economy. More importantly, it would seriously and directly affect the most vulnerable citizens in our society.

The proposed CY2024 risk score model changes in the Advance Notice eliminate condition codes that are related to diabetes, mental health, and other chronic conditions. Given our beneficiaries on the Island have a disproportionately high prevalence of these conditions, the proposed revisions to the HCC-Risk Adjustment Model will lead to an evidently unintended, yet unduly negative impact in Puerto Rico compared to the average among the states. Actually, it can be inferred that other disadvantaged communities in various states could suffer the same fate.

Furthermore, the proposed changes will further increase the funding gap and continue to undermine the already affected health equity opportunities and access for Puerto Rico's 640,000 MA beneficiaries. It is important to consider that, in the last 14 years, the disparity in funding has doubled, mostly driven by using Fee for Service (FFS) data in the benchmark formula, which does not adequately represent health costs on the Island. We must highlight that average benchmarks in Puerto Rico have fallen from a level of 24% below the national average in 2011 to a level of 41% below the national average in 2022, and now we are facing a proposal that will further impose additional cuts to the program.

Puerto Rico has the nation's 17th largest enrolled MA population (640,000 beneficiaries) and an MA penetration rate of 94% among beneficiaries eligible for both Medicare Parts A and B. This includes the 5th largest dual eligible population in the nation (290,000 beneficiaries). Due to the high poverty rate in Puerto Rico, MA is the only way that many beneficiaries can afford Part B benefits. This high dependence upon MA plans in Puerto Rico is also due to the lack of other core federal health benefits like the Part D Low Income Subsidy (Part D LIS), Medicare Savings Program (MSP) which pays for Part B, Long-term Services and Supports (LTSS) benefits, the Supplemental Security Income (SSI) program, and the Affordable Care Act (ACA) Marketplace subsidies.



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Additionally, Puerto Rico has the exceptional circumstance that only 6% of Medicare eligible beneficiaries remain in Original Medicare FFS (approximately 40,000), which are used as the basis to set MA benchmarks for the majority, 94% of the population, enrolled in MA plans. Thus, FFS data used by CMS in setting Puerto Rico's MA benchmarks is not representative of the utilization in the island. These numbers were confirmed by a new study completed by the Moran Company, which concluded that this population is not a representative group like the one assumed in the MA rate setting formula, which is based on local FFS experience¹ in the states and other jurisdictions.

Moreover, the Medicare program in Puerto Rico has received different statutory treatment since the 1960s, with special formulas and lower payment rates for Part A, opt-in (vs opt-out) enrollment for Part B, and others. Even as some of the Part A and B differences have been addressed in recent years, the resulting economic structure, access, and behaviors within traditional Medicare FFS still make it a different program compared to the rest of the nation. In sum, the Medicare FFS program in Puerto Rico is not the program that Congress assumed to exist when defining the current formula for MA rates.

As in other instances, I believe administrative action is not only possible, but desperately needed, to guarantee a minimum level of MA rates for citizens residing in Puerto Rico.

Lastly, the recently enacted Inflation Reduction Act (IRA), which redesigned Part D benefits and expanded Part D Low Income Subsidy (LIS) to help people with Medicare pay for prescription drugs and lower the costs of Medicare prescription drug coverage in the States, will have the opposite results in Puerto Rico. LIS does not apply on the Island and the IRA changes will have a negative impact in Puerto Rico by increasing the cost to our poorest Medicare beneficiaries. Unfortunately, the unique circumstances of the citizens in Puerto Rico were not addressed by the IRA, and the poorest will have to pay for increased costs, without the benefit of the Part D LIS.

Given these extraordinary circumstances affecting our beneficiaries in Puerto Rico, we urge you to delay and further study the impact and detailed implementation of the CY2024 benchmark and risk score model changes to the

¹ See Attachment - The Moran Company, Analysis of Puerto Rico Fee-For-Service Medicare Experience Implications for Setting Medicare Advantage Benchmarks (Dec. 2022).



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island. Additionally, CMS should permanently eliminate the current funding disparity in the MA program by establishing a specific minimum standard Average Geographic Adjustment (AGA) to address anomalies in existing FFS data and increasing disparities in lowest cost areas. We ask you to assign a minimum equivalent of a 0.70 AGA nationally and use a proxy to set the benchmarks for Puerto Rico. Doing it at the same time would neutralize the unprecedented harmful effects of the cuts to the duals and the chronically ill implied in the CY2024 proposed model. It is also noteworthy that 0.70 AGA would still be the lowest MA rates among all states, and a similar level as the USVI.

The extraordinary efforts undertaken during your incumbency are proof that working together can give Puerto Rico the opportunity of achieving equal treatment and continue improving the lives of our Medicaid and Medicare beneficiaries in Puerto Rico.

I look forward to working with you to address these requests for the benefit of the American citizens in Puerto Rico.

Sincerely,

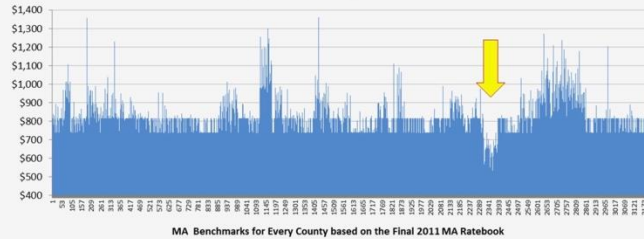
A handwritten signature in blue ink, appearing to read "Pierluisi".



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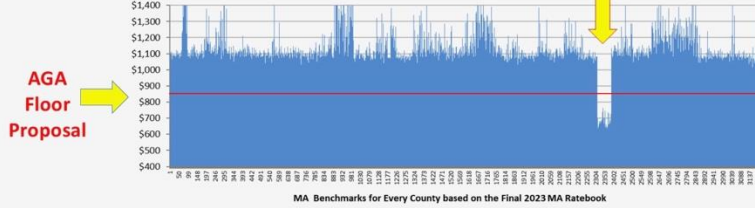
Medicare Advantage Funding Disparity in Puerto Rico – 2023 v. 2011

MA County Benchmarks 2011
Based on MA Ratebook at 3.0 STARs



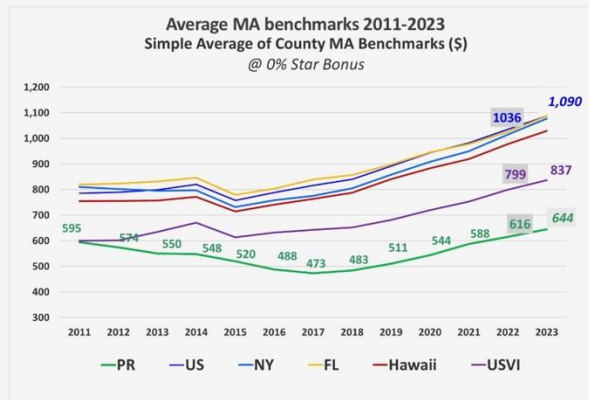
2011
US Avg = \$787
PR Avg = \$595
PR 24% lower
PR \$192 lower

MA County Benchmarks 2023
Based on MA Ratebook at 0% Quality Bonus



2023
US Avg = \$1,090
PR Avg = \$644
PR 41% lower
PR \$446 lower

Medicare Advantage Rate Disparity 2023



US Average
US Virgin Islands
Puerto Rico

- 2022 MA Rates are too low, and depend on temporary fixes
 - MA payment are 41% below vs US Avg
 - 37% below the lowest state
 - 23% below the USVI