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Congress of the United States
House of Representatives
Washington, DC 20515–5401

COMMITTEES:
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May 24, 2012

The Honorable Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Jonathan Blum
Deputy Administrator
Center for Medicare
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Tavenner and Deputy Administrator Blum:

I write to express my concerns regarding the fairness of the physician work, practice expense, and malpractice geographic practice cost indices (GPCIs) that the Centers for Medicare & Medicaid Services (CMS) has assigned to Puerto Rico pursuant to the Medicare Physician Fee Schedule. Each of the three GPCIs assigned to Puerto Rico is the lowest, by a significant margin, of the GPCIs assigned to the 89 current geographic payment areas. As a result, physicians in Puerto Rico are reimbursed substantially less for furnishing services to fee-for-service Medicare patients than physicians in any other location in the United States, including in the territories of Guam and the neighboring U.S. Virgin Islands. For example, consider the most frequently billed Part B procedure code, 99213—a mid-level evaluation and management office visit. Physicians in the geographic payment area in Florida with the lowest reimbursement rates (that is, doctors practicing medicine outside of Miami or Ft. Lauderdale) receive $70.65 for providing this service; physicians in the U.S. Virgin Islands receive $70.55; and physicians in Puerto Rico receive only $57.38.[1] As CMS prepares to release its rule establishing Medicare payment rates for 2013, I respectfully request that you carefully analyze whether each of the three GPCIs assigned to Puerto Rico is fair, and that you strongly consider taking steps to reduce the current payment disparity.

[1] This information was provided to my office by First Coast Service Options, Inc., the current Medicare Administrative Contractor for Jurisdiction 9, which encompasses Florida, the U.S. Virgin Islands and Puerto Rico.

The need for action by CMS is heightened by two factors. First, I have received a troubling letter signed by the presidents of many physician organizations in Puerto Rico, including the Puerto Rico College of Physicians and Surgeons, which represents 16,800 Island doctors in 72 specialties; the Puerto Rico Chapter of the American College of Radiology; the Puerto Rico Society of Endocrinology; the Puerto Rico Society of Nuclear Medicine; the Puerto Rico Chapter of the American College of Cardiology; the Puerto Rico College of Pain Management Physicians; and the Puerto Rico Association of Physical Medicine and Rehabilitation. This letter cites low Medicare reimbursement rates in Puerto Rico as a major contributing factor to what these physicians describe as an "exodus" of doctors, particularly specialists and sub-specialists, from the territory to the states, a trend that could devastate patient care in Puerto Rico if it continues unabated.

The second factor that makes this situation particularly urgent is the possibility that Congress could allow Section 412 of the *Medicare Prescription Drug, Improvement, and Modernization Act of 2003* (P.L. 108-173) to expire. As you are aware, that provision established a temporary 1.00 work GPCI floor in every geographic payment area. Subsequently, Section 134 of the *Medicare Improvements for Patients and Providers Act of 2008* (P.L. 110-275) established a permanent 1.50 work GPCI for one state, Alaska. Although the temporary 1.00 work GPCI provision had an original sunset date of 2006, it has repeatedly been extended by Congress, and is now slated to expire at the end of 2012.[2] Without a 1.00 floor, Puerto Rico would have a work GPCI of 0.908, by far the lowest in the nation.

To more fully explain my request, and to further underscore the need for prompt action, some additional background is in order.

Medicare Physician Fee Schedule

Under the Medicare Physician Fee Schedule, a relative value unit (RVU) is assigned to each of the roughly 7,000 types of medical services to capture the amount of required complexity or skill, the direct and indirect practice expenses, and the malpractice expenses that are typically involved in furnishing that service. The higher the RVU assigned to a service, the higher the physician payment. The specific formula used to determine the fee schedule for a particular service is as follows:

[2] Most recently, the 1.00 work GPCI floor was extended through the end of 2010 by Section 3102 of the *Patient Protection and Affordable Care Act of 2010* (P.L. 111-48); through the end of 2011 by Section 103 of the *Medicare and Medicaid Extenders Act of 2010* (P.L. 111-309); through the first two months of 2012 by Section 303 of the *Temporary Payroll Tax Cut Continuation Act of 2011* (P.L. 112-78); and through the remaining 10 months of 2012 by Section 3004 of the *Middle Class Tax Relief and Job Creation Act of 2012* (P.L. 112-96).

(Work RVU x Work GPCI) + (Practice Expense RVU x Practice Expense GPCI) + (Malpractice RVU x Malpractice GPCI) = Total RVU. Total RVU x Conversion Factor = Final Reimbursement Amount.

Physician Work GPCI

Physician work is the most heavily weighted component of the Medicare Physician Fee Schedule, at 48.27 percent. The work GPCI is intended to measure the relative cost of physician labor by geographic payment area, and utilizes data exclusively from the 2006-2008 Bureau of Labor Statistics (BLS) Occupational Employment Statistics.

As noted above, in the absence of a congressionally-mandated 1.00 statutory floor, Puerto Rico's work GPCI would be 0.908. The state with the lowest work GPCI would be South Dakota at 0.949. Because of a lack of data for Guam and the U.S. Virgin Islands, CMS has exercised its administrative authority to assign these two territories work, practice expense, and malpractice GPCIs based on other criteria. CMS has elected to assign Guam the same GPCIs that are assigned to Hawaii. Pursuant to a methodology that is not clear, CMS has assigned the U.S. Virgin Islands its own unique, relatively-high GPCIs.

Guam's work GPCI—because it is linked to Hawaii's work GPCI—is 1.00, while the U.S. Virgin Islands' work GPCI (if there were no 1.00 statutory floor) is 0.998. The juxtaposition between the work GPCI assigned to Puerto Rico and the much-higher work GPCIs assigned to all other geographic payment areas, including Guam and the U.S. Virgin Islands, is disconcerting.

Practice Expense GPCI

The practice expense (PE) component of the Medicare Physician Fee Schedule is weighted at 47.44 percent in 2012, up from 43.67 percent in 2011. The PE GPCI is intended to measure the relative cost of operating a medical practice in different geographical areas. The current formula utilized by CMS examines (1) employee wage data, which is obtained from the 2006-2008 BLS Occupational Employment Statistics; (2) office rent data, which was previously obtained from U.S. Department of Housing and Urban Development, but is now obtained from the 2006-2008 American Community Survey administered by the U.S. Census Bureau; and (3) data regarding the cost of contracted services such as legal and accounting services, which is obtained from the 2006-2008 BLS Occupational Employment Statistics. In addition, the work GPCI formula takes into account the cost of medical equipment and supplies; however, CMS assigns every geographic payment area a 1.00 for this variable, regardless of the differences in equipment and supply costs among jurisdictions. This almost certainly operates to the disadvantage of Puerto Rico, a non-contiguous jurisdiction that is over 1,000 miles from the U.S. mainland and that is dependent for equipment deliveries on air and maritime shipping, which tends to be more expensive and logistically challenging than ground-based shipping available in the lower 48 states.

Section 3102(b) of the *Patient Protection and Affordable Care Act of 2010* (P.L. 111-48) temporarily increased the PE GPCI in 2010 and 2011 for geographic payment areas with below-average PE GPCIs, including Puerto Rico. Notably, Section 10324 of the *Affordable Care Act* also established a permanent 1.00 PE GPCI floor for the five "frontier states": Montana, Nevada, North Dakota, South Dakota, and Wyoming. Despite efforts by me and a number of my colleagues in late 2011, Congress did not extend the temporary increase for non-frontier jurisdictions with below-average PE GPCIs established in the *Affordable Care Act*, and that provision has now expired.

With the expiration of that temporary increase, Puerto Rico's PE GPCI has decreased from 0.845 in 2011 to 0.678 in 2012, which is even lower than the Island's pre-*Affordable Care Act* PE GPCI of 0.694 in 2009. The gap between the PE GPCI assigned to Puerto Rico and the PE GPCI assigned to the geographic payment area with the second-lowest PE GPCI—West Virginia at 0.828—is 0.150, which is a considerable difference. The PE GPCI assigned to Guam is 1.154 and the PE GPCI assigned to the U.S. Virgin Islands is 1.002. I do not believe that the current PE GPCIs accurately reflect the relative cost of operating a medical practice in Puerto Rico versus Guam or the U.S. Virgin Islands.[3]

The practical impact of the expiration of the temporary PE GPCI increase can be demonstrated by looking again at procedure code 99213, referenced above. In 2011, when the temporary increase was in effect, the reimbursement rate under this code was $69.68 for Florida physicians outside of Miami or Ft. Lauderdale; $68.79 for U.S. Virgin Islands' physicians, and $61.97 for Puerto Rico physicians. In 2012, as a result of the expiration of the PE GPCI increase and other methodological changes made by CMS to the GPCI formula, the reimbursement rate is now $70.65 for Florida physicians outside of Miami or Ft. Lauderdale (a 1.3 percent increase versus 2011); $70.55 for U.S. Virgin Islands' physicians (a 2.5 percent increase versus 2011); and $57.38 for Puerto Rico physicians (an 8.0 percent *decrease* versus 2011).

Malpractice Insurance GPCI

The malpractice insurance component of the Medicare Physician Fee Schedule is weighted at 4.29 percent. The malpractice GPCI is intended to measure the relative cost of medical malpractice premiums in different geographic payment areas. To compute the malpractice GPCI, CMS obtains premium data from state insurance departments and private insurance

[3] On May 8, 2012, CMS provided my office with a "6th Update County Data File" spreadsheet, which was used to calculate the GPCI updates for 2011. The spreadsheet was prepared at a time when CMS used HUD data, rather than ACS data, to calculate office rent in the 89 geographic payment areas. HUD compiled office rent data for both Puerto Rico and the U.S. Virgin Islands and this data, as reflected on the spreadsheet, indicates that office rent in the U.S. Virgin Islands' three counties (St. John, St. Thomas, and St. Croix) was higher than in Puerto Rico's 78 counties (known as municipalities). Nevertheless, as noted, office rent is just one of multiple factors used by CMS to determine a geographic payment area's PE GPCI, and obviously has no bearing on the work GPCI or the malpractice GPCI.

companies. During a May 7, 2012 call with CMS officials, however, my office was informed that the agency has been unable to obtain up-to-date premium data from Puerto Rico since 2000 and, therefore, continues to utilize premium data from 1996 to 1998, when such data was evidently last available. Accordingly, my office is working with CMS and the Office of the Insurance Commissioner in Puerto Rico to facilitate the collection and utilization of more current premium data.

Using premium data that is 14 to 16 years old, CMS has assigned Puerto Rico a malpractice GPCI of 0.249. Like Puerto Rico's work GPCI and PE GPCI, the Island's malpractice GPCI is the lowest in the nation by a significant margin. The state with the lowest malpractice GPCI is Minnesota at 0.282. The malpractice GPCI assigned to Guam is 0.700 and the malpractice GPCI assigned to the U.S. Virgin Islands is 1.010. Again, it is difficult to believe that the glaring gap between Puerto Rico's 0.249 malpractice GPCI and the U.S. Virgin Islands' 1.010 malpractice GPCI accurately reflects reality, and CMS has not supplied any evidence to negate this impression.

To summarize, here is a table demonstrating how Puerto Rico's 2012 GPCIs compare to other jurisdictions.

Calendar Year 2012	Puerto Rico	State With Lowest GPCI	U.S. Virgin Islands	Guam
Work GPCI (in absence of 1.00 statutory floor)	0.908	0.949 (South Dakota)	0.998	1.00
PE GPCI	0.678	0.828 (West Virginia)	1.002	1.154
Malpractice GPCI	0.249	0.282 (Minnesota)	1.010	0.700

* * * * *

In light of the foregoing, the fairness of the GPCI system as it pertains to Puerto Rico ought to be the subject of a careful analysis. In particular, any system that reimburses doctors in one U.S. jurisdiction considerably less than doctors in any other geographic payment area—and far less than doctors in a jurisdiction about 50 miles away—warrants close examination. Yet, although a good deal of analysis has been conducted in recent years by the U.S. Government Accountability Office (GAO) and the Institute of Medicine (IOM) as to whether the current GPCI system should be reformed,[4] it does not appear that CMS, GAO or IOM has ever examined the issue as it relates

[4] *See, e.g.*, Institute of Medicine, "Geographic Adjustment in Medicare Payment, Phase I: Improving Accuracy, Second Edition," September 2011, available at http://www.iom.edu/Reports/2011/Geographic-Adjustment-in-Medicare-Payment-Phase-I-Improving-Accuracy.aspx; U.S. Government Accountability Office, "Medicare, Geographic Areas Used to Adjust Physician Payments for Variation in Practice Costs Should Be Revised," June 2007 (GAO-07-466); U.S. Government Accountability Office, "Medicare Physician Fees, Geographic Adjustment

to Puerto Rico in any depth. Indeed, the most recent analysis by GAO expressly excludes Puerto Rico from its analysis—noting that "we limited our analysis to the 87 payment localities within the 50 states and the District of Columbia"—and the most recent analysis by IOM does not even include Puerto Rico on its map of geographic payment areas.

I respectfully request that CMS expeditiously examine this issue and determine whether administrative steps may be warranted in 2013 to at least narrow the payment gap that exists between Puerto Rico and all other geographic payment areas. I hope the agency will approach this analysis with a sense of urgency, given that the problem could be compounded by the potential expiration of the 1.00 work GPCI floor in 2013.

In particular, I ask you to consider taking the following administrative steps:

- PE GPCI: As described above, principally because of the expiration of the temporary increase to the PE GPCI established in the *Affordable Care Act*, the reimbursement rate for Puerto Rico physicians under the most frequently used procedure code fell by 8.0 percent between 2011 and 2012, while it increased by 2.5 percent for physicians in the neighboring U.S. Virgin Islands. As a result, physicians in Puerto Rico now are reimbursed *20 percent less* than physicians in the U.S. Virgin Islands under this procedure code, a discrepancy I find extraordinarily difficult to explain to either the doctors I represent or the Medicare patients they treat.

  In addition, the current PE GPCI formula assigns every geographic payment area a 1.00 to account for the cost of equipment and supplies, and thus arguably disadvantages Puerto Rico, where shipping options are limited and extraordinarily expensive. Finally, it is not clear how, if at all, the PE GPCI formula accounts for the price of electricity in different geographic payment areas, an important factor in the cost of operating a medical practice. In Puerto Rico, the 2010 price of electricity was 22.10 cents per kilowatt hour, which is more than double the U.S. national average of 9.88 cents per kilowatt hour.[5]

  In light of these and other factors, I believe it would be appropriate for CMS to adjust Puerto Rico's 0.678 PE GPCI so that it is equal to or more closely aligned with the 1.002 PE GPCI assigned to the U.S. Virgin Islands. At the very least, CMS should ensure than Puerto Rico's PE GPCI is not less than the geographic payment area with the lowest PE GPCI (West Virginia at 0.828). If CMS believes it needs to evaluate this matter further, then I

Indices Are Valid in Design, but Data and Methods Need Refinement," March 2005 (GAO-05-119); U.S. Government Accountability Office, "Medicare Hospital and Physician Payments, Geographic Cost Adjustments Important to Preserve Beneficiary Access to Services," June 2002 (GAO-02-968T); U.S. Government Accountability Office, "Medicare Physician Payment, Geographic Adjusters Appropriate But Could Be Improved With New Data," July 1993 (HRD-93-93).

[5] U.S. Energy Information Administration, available at http://www.eia.gov/state/state-energy-profiles-notes-sources-data.cfm.

recommend that the agency temporarily increase Puerto Rico's PE GPCI by an appropriate amount—to 1.00, for example, or to 0.845, Puerto Rico's 2011 PE GPCI—while that analysis is being conducted.

- Work GPCI: The total geographical adjustment factor in Puerto Rico declined by 9.8 percent between 2011 and 2012. Thus, holding other parts of the physician payment formula constant (e.g., RVUs), reimbursement rates for Puerto Rico doctors would also have declined by 9.8 percent between 2011 and 2012. In the absence of the 1.00 work GPCI floor, this decline would have been 14.8 percent. Accordingly, if the 1.00 work GPCI floor is allowed to expire in 2013, reimbursement rates in Puerto Rico would take another tremendous hit. I intend to work with my colleagues in Congress to prevent this floor from being removed and to seek a fair, *permanent* work GPCI floor for the Island, as has been done for Alaska in the work GPCI context and for the "frontier states" in the PE GPCI context. If this effort encounters obstacles, I urge CMS to avert what would be yet another devastating cut for Puerto Rico physicians, by acting administratively to maintain the Island's work GPCI at 1.00 or, at the very least, to peg it to the geographic payment area with the lowest work GPCI (South Dakota at 0.949).

- Malpractice GPCI: It is imperative that CMS obtain accurate malpractice premium data for Puerto Rico and, if such data is not available, to assign a malpractice GPCI to the territory that is at least as high as the jurisdiction with the lowest malpractice GPCI (Minnesota at 0.282). Using 14-16 year-old data for Puerto Rico, while at the same time assigning relatively high malpractice GPCIs to the U.S. Virgin Islands and Guam, for which premium data is apparently not available, is unfair to Puerto Rico. Again, if CMS believes it needs to study this matter further, then I recommend that the agency temporarily increase Puerto Rico's malpractice GPCI while that analysis is being conducted.

I thank you in advance for your attention to this request and look forward to your response.

Sincerely,

Pedro R. Pierluisi
Member of Congress

cc: Cecilia Muñoz, Director, Domestic Policy Council, The White House
Tony West, Co-Chair, The President's Task Force on Puerto Rico's Status
David Agnew, Co-Chair, The President's Task Force on Puerto Rico's Status
The Honorable Dave Camp, Chairman, House Committee on Ways and Means
The Honorable Sander M. Levin, Ranking Member, House Committee on Ways and Means