

## **CMS Administrative Flexibility with Respect to the Territories**

U.S. territories are treated differently than states under a number of federal statutes, including Medicare and Medicaid. This has resulted in confusion and unintended consequences as CMS implements plan and provider payment formulas under Medicare and Medicaid. This proposal provides guidance and administrative flexibility to the Secretary of HHS and CMS to resolve unintended and/or disproportionate harm to the territories that arise from the strict implementation of standard statutory payment formulas. The Secretary will allow CMS to use proxies and adjust payment formula calculations to account for the distinct statutory and programmatic context in the Territories.

The purpose is to avoid disproportionate and unintended adverse impact on Medicare and Medicaid beneficiaries in the territories and ensure the impact of health care funding in the territories is not an afterthought for CMS.

### **For example:**

Medicare payment laws do not account for the fact that U.S. citizens residing in territories are not eligible for all federal benefits, such as supplemental security income (SSI) and the prescription drug low-income subsidy (LIS). The number of residents in these programs in a jurisdiction is an important factor in a number of Medicare payment formulas.

- The simplest example of this is the payment for DSH (Disproportionate Share Hospital) in Medicare Part A. The number of residents receiving SSI is used to account for the low-income population. Congress excluded U.S. residents of territories from SSI payments (which average about \$8,000 annual per beneficiary in states), but Congress never excluded hospitals in territories from the DSH payments. By not using an alternative indicator of the low income population, the program implementation has *de facto* and unintentionally excluded hospitals in the territories from fair appropriate DSH payment similar to that received in the state.
- Another example of needed adjustments is the Medicare physician geographic cost indexes (GPCIs) which are an element of adjusting payments to physicians treating Medicare beneficiaries. The cost of running a physician practice is relatively greater when operating on an island or other area remote from the source of supplies and services. Puerto Rico is an outlier at the bottom of the spectrum with regards to the Practice Expense GPCI, and recent studies have found a unique bias in the data used to estimate office rent costs, which is lowering the GPCI and therefore lowering Medicare payments to both physicians and Medicare Advantage (MA). CMS has previously made adjustments to account for higher physician practice expenses in Alaska, Hawaii, and the U.S. Virgin Islands, but not Puerto Rico.

There are just a few examples. In many cases, Medicare payments to territories are low outliers compared to the states. The provision simply gives flexibility and guidance for HHS to adjust the inputs into Medicare and Medicaid payment formulas to preempt the spiral that is generating greater distance between Medicare funding in territories and the rest of the Nation.

### **New Administrative Flexibility with Respect to the Territories – This proposal directs the Secretary of HHS, and related agencies, to do the following**

- Assess whether reliable data necessary for various Medicare payment formulas exist for the territories and if so, whether that data adequately reflect the true cost of care in the territories. If it does not, the Secretary is directed to use proxies or alternative factors to that standard data for the purposes of payments to the territories which will more accurately and fairly reflect the cost of care and the realities of the demographics of the beneficiary population.

- Assess if there are statutory or program definition distinctions in the context of the Territories which may be generating disproportionate results in the implementation of other rates or programs which are not intended to be different, or to be supported by an extraordinarily lower funding level compared to the rest of the jurisdictions.