

## HEALTHCARE FINANCING AND REIMBURSEMENT: A GLOBAL REVIEW OF MAJOR TOPICS AND TRENDS

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## LAWS AND REGULATIONS ON HEALTHCARE FINANCING AND REIMBURSEMENT

- 1. Please provide a bird's-eye view on the healthcare economy, indicating, in general terms, the role of the government (public healthcare) and private actors (private healthcare).**

The Commonwealth of Puerto Rico's healthcare economy is at least 80 per cent dependent on federal programmes of the United States such as Medicare, Medicaid, Veterans Administration and CHIPS. The healthcare industry is highly regulated, and the commonwealth's government basically controls and regulates the establishment of health services by requiring healthcare organisations and providers to request and justify healthcare services via the request and approval of the Puerto Rico's Health Department Certificates of Need and Convenience.

Puerto Rico is the chief provider of health services for the indigent population, principally through the Federal Medicaid programme of the US, which operates within a publicly owned and centrally administered healthcare delivery system. The jurisdiction also counts with approximately 64 general hospitals that provides services to residents of 93 urban and rural areas across the island and 78 municipalities. Most of the island is considered medically underserved and have limited direct public services such as Centres for Diagnosis and Treatment (CDC), clinics and hospitals.

The US federal government's role is mainly auditing and monitoring the proper use of federal spending and investments in the jurisdiction.

Private companies are participants of the Medicare Advantage and Medicaid programmes who provide a more in-depth monitoring of the administration, management and spending of federal programmes. Moreover, private insurers operate as managed care organisations, contracted by the government to provide services to Medicaid and Medicare beneficiaries.

The principal local regulators are the Puerto Rico Health Department, the Mental Health and Anti-Addiction Services Administration, Health Insurance Administration (ASES) and the Centres for Medicare and Medicaid Services.

Puerto Rico's healthcare economy is characterised by a strong government presence in funding and regulation, with increasing privatisation of service delivery. The system faces unique challenges due to its territorial status and economic conditions, necessitating continued collaboration between public and private sectors to ensure adequate healthcare for all residents.

- 2. Please provide a high-level overview of the legal framework regarding healthcare financing and reimbursement.**

The legal framework for healthcare financing and reimbursement in Puerto Rico is a complex system involving both federal and local legislation. The Further Consolidated Appropriations Act of 2020 and subsequent legislation have temporarily increased federal Medicaid funding for Puerto Rico, setting annual allotments through fiscal year 2027 and raising the federal medical assistance percentage (FMAP) to 76 per cent. Medicare in Puerto Rico now aligns more closely with mainland policies, including eligibility for Electronic Health Record incentive payments and inpatient prospective payment system rates. Locally, the Puerto Rico Health Insurance Administration Act (Act No 72 of 7 September 1993) established ASES, which implements the Government Health Plan (Plan Vital) through a managed care model. However, without further action, Puerto Rico's FMAP will revert to 55 per cent and federal funding will significantly decrease in FY 2028, potentially impacting healthcare financing and reimbursement

Most of the US federal health laws and statutes regarding privacy, security, healthcare compliance, operational, basic medical service obligations, quality of services, professional operational standards, anti-kickback, anti-briberies and anti-corruption statutes apply to the jurisdiction.

### **3. What are the key regulators and supervisory bodies regarding healthcare financing and reimbursement?**

The principal local regulators of the healthcare industry as mandated by several laws in the jurisdiction are the Puerto Rico Health Department, the Mental Health and Anti-Addiction Services Administration, Health Insurance Administration (ASES) and the Centres for Medicare and Medicaid Services. Also, the Office of the Insurance Commissioner (OCI) regulates insurance providers. The Puerto Rico Medicaid Program (PRMP) is responsible for Medicaid operations and oversight. Additionally, the US Department of Health and Human Services plays a role in federal funding allocations and policy decisions affecting Puerto Rico's healthcare system.

The Health and Human Services Office of the Inspector General also plays a pivotal role to conduct investigations and reviews to oversee the efficiency, effectiveness, financial health and safety of all federal programmes applicable to the health industry in the jurisdiction.

The HHS Office of the Inspector General is also very active and vigilant, working closely with all federal law enforcement agencies to prosecute any violations to federal laws and statutes via the federal court system for the District of Puerto Rico.

### **4. Has there been a change with healthcare financing and reimbursement as a consequence of the Covid-19 pandemic?**

As a direct consequence of the Covid-19 pandemic the percentages of people under Medicaid and Medicaid programmes increased significantly in Puerto Rico.

The Puerto Rico received approximately US\$2.47bn under the 2021 American Rescue Plan (ARPA), the Coronavirus State Fiscal Recovery Fund (CSFRF).

The purpose of these acts was intended to support local public health response, replace lost public sector revenue, address negative economic impact and provide premium pay for essential workers.

The application of these federal initiatives provided a significant financial and vitally necessary economic support for the healthcare industry during the pandemic, but their remedial nature did not produce any permanent or major structural changes to the local healthcare industry.

**5. Who has access to the healthcare system as a patient on the one side and as a medical service provider/supplier of medical goods on the other side? What are the conditions of admission?**

In Puerto Rico, all residents have access to the healthcare system, with about 94 per cent having health insurance. Most of the US federal health laws and statutes regarding privacy, security, healthcare compliance, anti-discrimination, operational, basic medical service obligations, quality of services, professional operational standards, anti-kickback, anti-briberies and anti-corruption statutes apply to the commonwealth of Puerto Rico.

Essentially there are no restrictions to healthcare access based on age, nationality, residence or any related consideration as determined by most federal laws and statutes.

On the provider side, licensed healthcare professionals, hospitals, pharmacies and medical suppliers can participate in the system. Physicians must meet specific requirements, including holding a medical degree, passing licensing exams and obtaining a licence from the Puerto Rico Board of Medical Examiners. Other providers and facilities must meet profession-specific licensing requirements, obtain necessary certifications, and comply with federal and local regulations. All providers must register with the Puerto Rico Medicaid Program through the Provider Enrolment Portal if serving Medicaid patients, maintain professional liability insurance, and participate in continuing education programmes.

Nevertheless, there are medical specialties and services with a limited number of providers that are not able to service adequately the demand for certain services, which represents a structural challenge for the local healthcare system.

**HEALTH INSURANCE FINANCING AND COVERAGE**

**6. How are health insurance carriers financed? How are premiums determined?**

Health insurance carriers in Puerto Rico are financed through a combination of premium payments and government funding. Premiums are determined based on several factors, including the type of coverage, risk assessments and regulatory requirements. For individual and small group plans, insurers must develop rates based on an adjusted community rating, which considers factors such as age, geographic area and family composition. The Puerto Rico Insurance Code requires that premium rates be reasonable in relation to the benefits provided.

The Medicaid programme in Puerto Rico differs from Medicaid programmes operating in the US because the Puerto Rico Medicaid delivery system is a subset of the larger public government healthcare delivery system for most of the island's population.

The Puerto Rico Department of Health is the single state agency, and it has a cooperative agreement with the Puerto Rico Health Insurance Administration (PRHIA), also known as

Administración de Seguros Salud de Puerto Rico (ASES), which implements and administers the island-wide health insurance system.

Through Section 1108 of the Social Security Act (SSA), each territory is provided with base funding to serve their Medicaid populations.

As an illustrative example for the period of 1 July 2011 through 30 September 2019, it provided an additional US\$5.4bn in Medicaid funding to Puerto Rico.

Unlike the fifty states and the District of Columbia, where the federal government will match all Medicaid expenditures at the appropriate federal matching assistance percentage (FMAP) rate for that state, in Puerto Rico the FMAP is applied until the Medicaid ceiling funds are exhausted.

In the commonwealth, medical insurance is encouraged but is not mandatory.

Puerto Rico is a managed care jurisdiction, whereas beneficiaries have the option to enrol into any of the four managed care plans contracted to provide medical services island wide.

Regarding the Children's Health Insurance Program (CHIP), Puerto Rico has elected to operate a title XXI funded Medicaid Expansion programme that covers children up to age 19 with family income up to 266 per cent of the local poverty level.

Medicare Advantage plans in Puerto Rico, like their counterparts in the US, often subsidise Medicare's Part B premium and have lower cost-sharing than that of traditional Medicare, resulting in a particularly attractive option to low-income Medicare beneficiaries.

Although Puerto Rico is a US territory, it has a separate healthcare system.

The insurance plans designed for the mainland might not automatically extend full coverage for healthcare in Puerto Rico. Consequently, local health insurance companies are more affordable than other parts of the United States and there is very little they don't cover.

According to the Puerto Rico Statistics Institute healthcare costs on the island are 31.3 per cent below the US average.

In the commonwealth, at least 65 per cent of the insured in the health insurance market are under some kind of coverage nourished by federal funds: 39 per cent under Medicaid, 26 per cent Medicare, 19 per cent Medicare Advantage, 6 per cent Traditional Medicare and 1 per cent Supplemental Medicare.

The rest of the health insurance market is composed of 16 per cent private large group plans, 4 per cent private small groups plans, 5 per cent individual private plans, 8 per cent state government public employees, 2 per cent federal government employees and 1 per cent government retired employees.

Recent data from the Puerto Rico Health Department indicate that 96 to 97 per cent of patients in Puerto Rico are covered under some kind of health insurance plan, but approximately 200,000 people are still uninsured.

The uninsured population is basically composed of foreigners, migrants, the homeless and the younger population.

An alternative to control the ever-increasing cost of medicines is through the active implementation of the Pharmacy Benefit Managers Act, the extension of the Medicaid Rebate Program and the extension of applicable dispositions of price negotiations under the Inflation Reduction Act.

**7. How is coverage of medical services by health insurance carriers regulated? Are there differences in coverage for in-person medical appointments and telemedicine appointments?**

Coverage of medical services by health insurance carriers in Puerto Rico is regulated by the Puerto Rico Insurance Code and overseen by the Puerto Rico Department of Insurance. The Puerto Rico Telemedicine and Telehealth Act of 2018 mandates that health insurance companies, insurers, health services organisations, and similar entities must cover services rendered through telemedicine or telehealth technology as if the consultation was held in person. This requirement ensures parity between in-person and telemedicine appointments. It is also very important to indicate that the Puerto Rico Insurance Code plays a significant role in the regulatory role of insurance carriers, including healthcare insurance.

The Puerto Rico Patient Ombudsman Office is also active in safeguarding that all medical patients are treated fairly within the healthcare system, particularly in its application of health insurance plans, whereas patients and subscribers can submit complaints related to controversies regarding coverage and treatment.

The experience is that telemedicine is generally encouraged as a cost-reducing factor consideration, againsts other factors like effectiveness, efficiency and the smart use of available technologies.

Nevertheless, the trend is that in person medical appointments tend to be the norm and telemedicine usage has been declining after the pandemic.

**HOSPITAL SECTOR**

**8. How are services provided by hospitals in the stationary (inpatient) and ambulatory (outpatient) settings financed and reimbursed?**

In the commonwealth, hospitals are free to negotiate rates and payments schedules with the insurance companies.

There are also local statutes intended to enforce rightful payments of fees within reasonable and fixed periods of time once the process of invoicing for services have been adequately completed per applicable invoicing coding and processing.

Hospitals in Puerto Rico must also comply with the Price Transparency Act of the Centers for Medicare and Medicaid Services (CMS).

**9. How are the prices of such services determined? How is economic efficiency controlled?**

Even though hospital operations on the island are far less costly than in the mainland, the operation of hospitals in the commonwealth has turned quite challenging because of a combination of factors such as high operational costs, energy costs, electrical grid unreliability, shortages of specialised doctors, shortage of skilled nurses, among many other factors.

Economic efficiency is controlled through various mechanisms, including the use of managed care models, implementation of quality improvement programmes, and monitoring by ASES and federal agencies. However, the system faces challenges due to lower reimbursement rates, high poverty rates, and ongoing economic instability, which can impact the overall efficiency and sustainability of healthcare delivery.

**HEALTHCARE PROVIDERS IN PRIVATE PRACTICE**

**10. How are services provided by physicians, therapists, laboratories and other service providers financed and reimbursed?**

In Puerto Rico, services provided by physicians, therapists, laboratories and other healthcare providers are financed and reimbursed through a combination of public and private funding mechanisms. Medicaid and Medicare Advantage, which cover a significant portion of the population, are funded through federal and local sources, with Puerto Rico receiving lower reimbursement rates compared to US states. The Puerto Rico Health Insurance Administration (ASES) manages the government health plan, utilising both federal and local funds. Private insurance also plays a role, often through managed care organisations contracted by the government. Reimbursement methods include fee-for-service, all-inclusive rates for outpatient services, and prospective payment systems for inpatient care. However, the system faces challenges due to lower reimbursement rates and economic instability, impacting the sustainability of healthcare delivery.

The Puerto Rico Act 104 of 2002 has been instrumental in regulating the terms and conditions of reimbursement from health insurance plans to healthcare providers to enforce reasonable periods of time for payment and reimbursement for services rendered. Although the statute is far from perfect, it has been an important piece of legislation to promote a more efficient healthcare system and prevent unreasonable, capricious or abusive practices from health insurance plans.

**11. How are the prices of such services determined? How is economic efficiency controlled?**

Healthcare pricing is very complex, as on the mainland, but in general the overall related costs for healthcare service providers in the island is significantly less than in the US.

The challenge for economic efficiency is predicated based on cost controls, operational efficiency, integration of new technologies, monitoring, process audits, professional development, specialised training, healthcare compliance programmes and avoidance of fraud and abuse.

**PHARMACEUTICALS AND MEDICAL DEVICES**

## 12. How are pharmaceuticals and medical devices financed and reimbursed?

The pharmaceutical and medical device manufacturing in the commonwealth is impressive.

Puerto Rico manufactures 16 of the top 20 selling drugs in the mainland US.

The pharmaceutical industry in Puerto Rico is the island's most prominent industry – generating approximately 30 per cent of the local GDP for the past four decades and 80,000 jobs, making the island the fifth largest area in the world for pharmaceutical manufacturing with more than 80 plants including the world's leading pharmaceutical brands.

In 2019 alone, this sector exports totalled more than US\$40bn, with US\$31bn exported to the US market and the rest to more than 130 countries, significantly more than any other US state.

In Puerto Rico, financing and reimbursement for pharmaceuticals and medical devices are primarily managed through the island's Medicaid programme and Medicare Advantage plans. The Puerto Rico Medicaid Program operates under a managed care model, with the Puerto Rico Health Insurance Administration (ASES) contracting with managed care organisations to provide services. For prescription drugs, Puerto Rico has joined the federal Medicaid Drug Rebate Program, which allows for rebates on carved out fee-for-service drugs. The professional dispensing fee for these drugs is capped, and reimbursement is based on the lowest of actual acquisition cost plus dispensing fee, maximum allowable cost-plus dispensing fee, or the provider's usual charge. For medical devices, reimbursement is typically included in overall healthcare service payments, with specific policies varying by payer. The Medical Devices market in Puerto Rico is projected to grow, driven by increasing healthcare expenditure and an ageing population, though the island faces challenges due to lower reimbursement rates compared to US states.

## 13. How are the prices of pharmaceuticals and medical devices determined? How is economic efficiency controlled?

Puerto Rico has a unique economic and legal status as a territory of the US.

Puerto Ricans are US citizens; the official currency is the US dollar; and its exceptional geographic location and the fact that the US dictates its trade policy makes the island a paramount centre for the manufacturing of the major leading pharmaceutical brands and medical devices.

Puerto Rico has reformulated and restructured its existing tax incentives policies while approving the new Puerto Rico Act 60 to harmonise and simplify the processes involved in obtaining tax incentives to offer world class tax incentives to entrepreneurs and companies achieving dramatic progress.

Economic efficiency is controlled through various mechanisms, including the use of managed care models, implementation of quality improvement programmes, and monitoring by agencies like the Puerto Rico Health Insurance Administration (ASES) and federal regulators.

The pharmaceutical and medical device industry in Puerto Rico is also poised to receive a major boost as a direct consequence of new congressional initiatives looking to strengthen

the supply chains of critical medical drugs after the experience held during the Covid pandemic.

There is some discussion among several sectors that, given the strategic importance of the commonwealth's world-class manufacturing of so many leading pharmaceutical drugs, that the commonwealth should consider using that leverage to negotiate better terms and conditions, better prices and related considerations for its population.

## LITIGATION INVOLVING HEALTHCARE FINANCING AND REIMBURSEMENT

### 14. Please provide a high-level overview of major litigation topics and landmark cases regarding healthcare financing and reimbursement.

Recently the US Department of Labor filed a complaint against Suffolk Administrative Services LLC in San Juan after investigators with its Employee Benefits Security Administration (EBSA) found that, since at least 2016, the companies and their current and former executives – Alexander Renfro, William Bryan and Arjan Zieger – have marketed, sold and serviced employer-sponsored health benefit plans while collecting and diverting significant fees for themselves in violation of the Employee Retirement Income Security Act.

The Department alleges Suffolk Administrative Services and its current and former executives unilaterally approved millions in unreasonable and unnecessary fees to Suffolk Administrative Services, its sister company Providence Insurance Co, and other service providers. EBSA determined more than half the money paid by the plans is directed at administrative costs with the remainder used to pay health claims.

According to spokesperson and Regional Director Klaus Placke, the Department of Labor acted to stop this excessive fee arrangement and recover as much as US\$40m in unjust profits on behalf of plan participants to ensure the plans are administered properly and that their participants have access to affordable healthcare benefits.

Also, recently it was reported that the US Attorney for the District of Puerto Rico and the US Department of Health and Human Services, Office of Inspector General (HHS-OIG) announced that MMM Holdings LLC (MMM) has agreed to pay US\$15,228,340 to resolve False Claims Act allegations that it implemented a gift card incentive programme in violation of the Anti-Kickback Statute.

In connection with this settlement, MMM entered into a five-year Corporate Integrity Agreement (CIA) with the HHS-OIG that requires, among other conditions, that MMM create procedures designed to ensure that any new or existing marketing arrangements do not violate the Anti-Kickback statute.

## RECENT DEVELOPMENTS AND TRENDS

### 15. What are the recent developments and trends for the next few years? Please outline any unresolved issues, proposed changes, or trends for healthcare financing and reimbursement and briefly indicate how these may foreseeably affect the medical sector in the near future.

In general, it can be stated that the healthcare system in Puerto Rico faces ongoing challenges such as demographic changes, general access to quality health services, hospital closures, hospital mergers, shortages of healthcare professionals and technological challenges.

Recent developments in Puerto Rico's healthcare financing include a temporary increase in federal Medicaid funding through FY 2027, with the FMAP raised to 76 per cent. However, a potential funding cliff looms in FY 2028 if no further action is taken. The Medicare Advantage programme faces challenges with proposed changes that could significantly reduce payments. Ongoing issues include persistent disparities in reimbursement rates compared to US states and hospital consolidation driven by financial pressures. These trends may lead to reduced healthcare access and services, accelerated provider consolidation, and difficulties in retaining healthcare professionals. The medical sector in Puerto Rico continues to grapple with funding disparities and potential reductions in federal support, which could significantly impact healthcare delivery and access in the near future. Addressing these challenges will be crucial for ensuring the sustainability of Puerto Rico's healthcare system.

Notwithstanding these challenges, the quality of healthcare services in Puerto Rico are among the best in the Caribbean and Latin America. As a result, several specialised medical groups have made significant progress on turning the commonwealth into a major attractive destination for the medical tourism industry in the region.