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Congress of the United States
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September 4, 2012

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

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

Re: Formal Comment Letter on Proposed Rule (CMS-1590-P)

Dear Secretary Sebelius and Administrator Tavenner:

I write to provide a formal comment on the proposed rule (CMS-1590-P) issued by the Centers for Medicare and Medicaid Services and published in the *Federal Register* on July 30, 2012, which addresses the physician fee schedule and other Medicare Part B payment policies. This formal comment reiterates and expands upon arguments I made in a letter to Administrator Tavenner and Deputy Administrator Jonathan Blum, dated May 24, 2012—which Ms. Tavenner responded to on July 2, 2012—and in a subsequent meeting I held with Mr. Blum on August 2, 2012. For a combination of reasons, set forth below and in my prior communications, I respectfully submit that the final rule should make a reasonable upward adjustment in one or more of the physician work, practice expense, and malpractice geographic practice cost indices (GPCIs) that CMS assigns to Puerto Rico for 2013. Such action is critical to enable Puerto Rico to retain well-trained medical professionals and to improve the quality and timeliness of care available to Island patients.

I believe that there is sufficient evidence to cause an objective observer to question the fairness and accuracy of the GPCIs that CMS has calculated for the Puerto Rico payment locality, and to justify administrative action by CMS, starting in 2013, to reduce the sizeable payment gap that exists between the Puerto Rico payment locality and all other payment localities. Nevertheless, if CMS believes it needs more time to evaluate this matter, then I respectfully ask that the agency provide for a temporary, one-year increase to one or more of Puerto Rico's GPCIs, which could then be continued in effect or modified as part of the Seventh GPCI Update that CMS intends to implement in 2014. Given the importance of this issue to patients and physicians in Puerto Rico, I hope that CMS will not decline to make a defensible adjustment for 2013 on the rationale that a

broad-based update affecting all payment localities is contemplated for 2014. In short, I believe there are considerations unique to Puerto Rico that warrant specifically-tailored action by CMS for the coming calendar year.

Background

My letter of May 24th contains a detailed description of the situation that gives rise to this request, and the proposed rule also includes a discussion of the issue. See *Federal Register*, Vol. 77, No. 146, Page 44754 (Section II.D.3.b, entitled "GPCI Assignments for the Puerto Rico Payment Locality"). Accordingly, I will provide only a concise overview here.

Each of the three GPCIs calculated for Puerto Rico is the lowest, by a significant margin, of the GPCIs for any of the 89 geographic payment localities. 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.

Notably, reimbursement payments in Puerto Rico are far lower than reimbursement payments in the U.S. territories of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Guam—each of which has been assigned the same GPCIs as Hawaii—and also far lower than reimbursement payments in the United States Virgin Islands, which is 50 miles from Puerto Rico and whose residents often travel to the Island for advanced care.

It is important to underscore that the reason reimbursement payments are lower in Puerto Rico than in the four smaller territories is not because CMS has determined from the data that it is more expensive to practice medicine in those jurisdictions than in Puerto Rico. Rather, the primary data sources that CMS uses to calculate GPCIs—namely, the 2006-2008 Bureau of Labor Statistics Occupational Employment Statistics and the 2006-2008 American Community Survey—contain data for Puerto Rico, but do not contain data for the four other territories. In the absence of data that can be used to compute GPCIs in the smaller territories, CMS has assigned GPCIs to those jurisdictions based on some other criteria. The GPCIs that CMS has assigned to the smaller territories are relatively high—far higher than the GPCIs calculated for Puerto Rico.

If the proposed rule is implemented in its current form, the 2013 GPCIs will be the same as the 2012 GPCIs in all geographic payment localities. To illustrate the gap between Puerto Rico and other localities, I have prepared a table contrasting the GPCIs calculated for Puerto Rico with the GPCIs calculated for the state with the lowest GPCI and with the GPCIs assigned to the four other territories. (The chart lists the work GPCIs that would apply in the absence of the temporary 1.00 work GPCI floor, which was extended through the end of 2012 by Section 3004 of the *Middle Class Tax Relief and Job Creation Act of 2012*.)

CY 2013	Puerto Rico	State With Lowest GPCI	USVI	American Samoa/CNMI/Guam (same as Hawaii)
Work GPCI (in absence of 1.00 statutory floor currently in effect)	0.908	0.949 (South Dakota)	0.998	1.00
Practice Expense GPCI	0.678	0.828 (West Virginia)	1.002	1.154
Malpractice GPCI	0.249	0.282 (Minnesota)	1.010	0.700

To observe the practical implications of this substantial disparity, consider the most frequently billed Part B procedure code, 99213—a mid-level evaluation and management office visit. The CY 2012 national average reimbursement payment for this service is $70.46. Physicians in the U.S. Virgin Islands receive $70.55; physicians in Orlando, Florida receive $70.65; physicians in Hawaii and the three Pacific territories receive $75.14; and physicians in Alabama (the state with the lowest reimbursement payment under this procedure code) receive $64.93. Puerto Rico physicians receive only $57.38—12 percent less than physicians in Alabama, nearly 20 percent less than physicians in Orlando and the U.S. Virgin Islands, and nearly 25 percent less than physicians in Hawaii and the Pacific territories.

Physicians are rational economic actors. Although a variety of factors inform a doctor's decision whether and where to practice medicine, the rate of reimbursement is an important consideration. The evidence strongly suggests that the extraordinarily low GPCIs in Puerto Rico—which declined by nearly 10 percent between 2011 and 2012, due primarily to the expiration of the practice expense GPCI floor established for certain payment localities by Section 3102(b) of the *Patient Protection and Affordable Care Act of 2010*—have adversely affected Island physicians and, by extension, their patients. I have received a letter signed by the presidents of many physician organizations in Puerto Rico, including the Puerto Rico College of Physicians and Surgeons ("Colegio de Médicos-Cirujanos de Puerto Rico"), which represents 16,800 doctors in 72 specialties. This letter cites low Medicare reimbursement payments 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.

Notably, on September 1, 2012, a study commissioned by the Puerto Rico College of Physicians and Surgeons, entitled the "Cost of Medical Services in Puerto Rico," was completed and forwarded to my office by the College's President, Dr. Eduardo Ibarra. The study, an 85-page PowerPoint presentation, was prepared by Custom Research Center, Inc., a company in San Juan, Puerto Rico. The data collected and the conclusions reached in the study are highly relevant to the GPCI issue—in particular, the cost of electricity, the cost of medical equipment and medical supplies, and the cost of malpractice insurance—and serve to sharpen the concerns about whether the current GPCIs calculated for Puerto Rico are fair and accurate. I am advised that the full study is being submitted by other individuals and/or organizations to be made part of the formal comment record. Throughout this letter, I refer to this study as the "September 2012 Custom Research Center Study" and I catalog the study's most relevant conclusions in the final section of this letter.

A Combination of Factors Justify a Reasonable Increase in One or More of Puerto Rico's GPCIs

I respectfully submit that a number of factors, particularly when considered in combination, justify a reasonable upward adjustment in one or more of Puerto Rico's GPCIs, starting in 2013.

First, as noted above, the payment differential between Puerto Rico and the other territories, especially the neighboring U.S. Virgin Islands, is disquieting. To be clear, my intention here is not in any way to question the appropriateness of the GPCIs that CMS has assigned to the four smaller territories or to suggest that those GPCIs should be reduced. Rather, I simply seek to highlight the substantial payment disparity that exists between Puerto Rico and its fellow territories, and to contend that this disparity serves to undermine public confidence, especially among my constituents, in the fairness and accuracy of Puerto Rico's GPCIs. In point of fact, when it comes to the cost of practicing medicine, the similarities between the territories far outweigh the differences; all of the territories are non-contiguous jurisdictions that, for example, face comparatively high shipping and utility costs. For that reason, I believe that there is a clear and compelling need to restore some semblance of balance between the Medicare rates paid to physicians in Puerto Rico and to physicians in the other territories by increasing the GPCIs that apply in Puerto Rico.

Second, as Ms. Tavenner's July 2nd response letter and the proposed rule both expressly acknowledge, there is a significant problem with the malpractice GPCI calculated for Puerto Rico. To compute the malpractice GPCI, CMS obtains premium data from state insurance departments and private insurance companies. However, for one reason or another, CMS has not been able 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.

Using premium data that is about a decade-and-a-half out of date, CMS has calculated Puerto Rico's malpractice GPCI at 0.249. The state with the lowest calculated malpractice GPCI is Minnesota at 0.282. The three territories in the Pacific have been assigned Hawaii's malpractice GPCI of 0.700, and the U.S. Virgin Islands has been assigned a malpractice GPCI of 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—upon my inquiry—CMS has not provided any evidence to suggest it does. In fact, the September 2012 Custom Research Center Study concludes—based on information obtained from nearly 300 physicians and multiple insurance agents—that the average cost of malpractice insurance has increased 57% for all doctors in Puerto Rico between 2001 and 2011, and increased 75% for specialists. (The study notes that 74% of doctors have insurance with SIMED (Sindicato de Aseguradores para la Suscripción Conjunta de Seguro de Responsabilidad Profesional Médico-Hospitalaria), 13% have insurance with Triple S, and 5% have insurance with CAN.)

Especially in light of the information presented in the September 2012 Custom Research Center Study, it is imperative that CMS obtain accurate malpractice premium data for Puerto Rico as soon as possible. If reliable data cannot be collected in time for use in calculating Puerto Rico's 2013 malpractice GPCI, I respectfully submit that the most appropriate course of action is for CMS to temporarily assign Puerto Rico a malpractice GPCI for the coming year that is the same as, or at least more closely aligned with, the malpractice GPCI in the U.S. Virgin Islands or the U.S. national average. I firmly believe that deferring action until 2014 is not appropriate. At present, CMS is calculating a malpractice GPCI for Puerto Rico using data that is 14 to 16 years old, because current data is unavailable. Yet, for the four other territories, where contemporary malpractice data is also lacking, CMS has at least made a good-faith effort to assign GPCIs that reflect the true cost of malpractice premiums in those jurisdictions. This inconsistent approach is unfair in both appearance and effect.

Third, there are reasons to question the fairness and accuracy of the practice expense GPCI calculated for Puerto Rico. I believe these reasons are sufficient to justify a modest upward adjustment in the Island's practice expense GPCI, at least on a one-year basis until CMS can conduct a more in-depth inquiry into the matter.

The practice expense GPCI is intended to measure the relative cost of operating a medical practice in different payment localities. The formula currently utilized by CMS examines non-physician employee wage data, which is obtained from the 2006-2008 BLS Occupational Employment Statistics; 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 (ACS) administered by the U.S. Census Bureau; and data regarding the cost of contracted services such as legal and accounting services, which is also obtained from the 2006-2008 BLS Occupational Employment Statistics.

In addition, the practice expense GPCI formula includes an "equipment, supplies and other" category. However, because CMS assumes that most medical equipment and medical supplies are sold through a national market, the agency does not adjust for differences in equipment and supply costs among jurisdictions; instead, CMS assigns every payment locality a 1.00 for this component. See "Revisions to the Sixth Update of the Geographic Practice Cost Index: Final Report," Acumen LLC (October 2011), page 7.

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, that must import nearly everything it uses (from hand sanitizer to X-ray machines), and that is dependent for equipment deliveries on air and maritime shipping, which tends to be more expensive than ground-based shipping available in the contiguous 48 states. Indeed, according to the September 2012 Custom Research Center Study, 82% of the nearly 300 physicians surveyed said that the price of medical equipment is higher in Puerto Rico than in the U.S. mainland, with 95% of those doctors attributing the price differential to the higher cost of transportation. One representative of a medical equipment firm that was contacted provided an estimate that medical equipment was 10% to 15% higher in Puerto Rico. Other estimates given by respondents ranged from 5% to 16%. Accordingly, a modest adjustment to Puerto Rico's practice expense GPCI, to account for the fact that the current formula does not adequately capture the higher cost of shipping medical equipment and medical supplies to the Island, would seem appropriate.

Moreover, the "office rent" category of the practice expense GPCI formula is cause for particular concern with respect to the Puerto Rico payment locality. A number of organizations—such as the Institute of Medicine and the Government Accountability Office—have recommended calculating the office rent index using data that measures commercial rents on a per-square-foot basis. I am advised, however, that CMS has been unable to find a reliable data source that provides this type of information. Therefore, CMS relies on residential fair market rent data to serve as a proxy for variation in physician costs for office space. The agency now uses data from the 2006-2008 ACS. Puerto Rico data is included in the 2006-2008 ACS.

Specifically, CMS uses two-bedroom residential rental data as a proxy for the relative cost difference in physician office rent. CMS calculates the cost of renting a two-bedroom residence in every county/municipality with more than 20,000 inhabitants within a payment locality, computes the weighted average for that payment locality, and compares that to the national average. (According to Ms. Tavenner's July 2nd response, CMS does not have residential rental data for the U.S. Virgin Islands and therefore has assigned the territory a 1.00—representing the U.S. national average.)

According to the ACS data, Puerto Rico has—by far—the lowest residential rental costs of any payment locality. The 31 counties or municipalities in the country with the lowest two-bedroom

residential rental costs are all in Puerto Rico. And, of the 50 counties or municipalities in the country with the lowest two-bedroom residential rental costs, all but two are in Puerto Rico.

As a general matter, it may well be true that residential rents and commercial rents are synchronized to such an extent that it is valid to compute the office rent index on the basis of residential rents. But this extrapolation method is unlikely to produce accurate results in the case of Puerto Rico, where the residential rental market is far less developed than in the 50 states and where demand for rental units is concentrated in low-income to very low-income households who cannot afford to purchase a home. See Dr Juan Lara, "Puerto Rico's Housing Market: Looking Beyond the Recession," Advantage Business Consulting, January 12, 2007.[1]

The municipality-level, two-bedroom rental prices in the ACS file for Puerto Rico are significantly lower than the prices cited in other data sources. For example, the ACS lists the average two-bedroom rental in San Juan at $410 per month, whereas *FindtheData.org* lists it at between $540 and $840 per month (depending on the zip code)[2] and *Global Property Guide* lists it at over $800 per month.[3] To take another example, the ACS lists the average two-bedroom rental in Aguadilla at $246 per month, while *FindtheData.org* lists it at between $470-$570 per month.

Municipality after municipality, the ACS numbers strike a knowledgeable observer as difficult to reconcile with reality. It seems highly probable that the ACS numbers are being affected by the very low rents paid by the large number of residents of public housing units (55,000 families or 250,000 individuals) and Section 8 housing units (nearly 9,000 families) in Puerto Rico. This conclusion is reinforced by the fact that ACS rental data measures "gross" rent, which includes both monthly rent and monthly utilities. The cost of electricity in Puerto Rico is more than double the national average: in 2010, the price in Puerto Rico was 22.10 cents per kilowatt/hour, compared to a national average of 9.88 cents per kilowatt/hour. In fact, the September 2012 Custom Research Center Study concludes that, for a Puerto Rico doctor paying average rent, the electricity bill alone will add 26% to the monthly rent and the doctor's total utility bill will add 39% to monthly rent. For primary care physicians, who generally earn less and rent smaller offices, the study finds that the total utility bill will add "a whopping 62%" to the monthly rent. Of course, the high cost of electricity and other utilities that confront physicians in Puerto Rico would not be adequately captured in the ACS gross two-bedroom residential rental data if many of the rental properties are public housing units and Section 8 housing units, since residents of those units do not generally pay utilities.

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[1] See http://advantagebusinessconsulting.wordpress.com/2012/01/20/puerto-ricos-housing-market-looking-beyond-the-recession/.

[2] See http://average-rent.findthedata.org/d/a/Puerto-Rico.

[3] See http://www.globalpropertyguide.com/Caribbean/Puerto-Rico/Rental-Yields.

In short, if the participants in Puerto Rico's residential rental market are largely skewed towards the low or very low end of the income scale, as the evidence indicates they are, then that market will not be a suitable proxy for commercial office rents. One example helps make this point: A doctor from Puerto Rico has informed my office that he pays $1,725 per month for a 1,200 square-foot office in San Germán, Puerto Rico (a municipality in the southwest part of the Island with a population of 35,000), and that this rent is typical for the area. That rental price—$17.25 per square foot per year—is about the same as the average asking rent in Indianapolis, which is the county seat of Marion County, Indiana.[4] Yet, according to the ACS, the average cost of renting a two-bedroom residence in Marion County is $698 per month, whereas the cost in San Germán is listed at less than half that amount, at $321 per month. This example raises substantial questions about whether using residential rental data as a proxy for commercial rents in Puerto Rico, without making any adjustment to account for unique local market conditions, is a prudent way to proceed. The September 2012 Custom Research Center Study, discussed in greater detail in the next section, reinforces this concern.

September 2012 Study on Cost of Medical Services in Puerto Rico, Prepared by Custom Research Center, Inc.

This section describes the September 2012 Custom Research Center Study, cited at various points in this comment letter, in greater detail.

Study Methodology

Custom Research Center, Inc. describes the study's methodology as follows:

> A combination of primary and secondary research instruments were used to meet the specific objectives of the project. A quantitative survey of 281 medical practitioners in Puerto Rico was used to make an estimate of medical practice costs in Puerto Rico, as well as perceptions of the trends in costs, the degree to which doctors are satisfied with remuneration from Medicare, and the percentage of doctors who are considering moving out of Puerto Rico because of dissatisfaction with remuneration for medical services.
>
> A quantitative survey of doctors who have emigrated with a sample size of 35 was used to explore the reasons why doctors practicing in Puerto Rico have chosen to move to the US mainland. One-on-one interviews of representatives of medical equipment companies, insurance agents that deal with malpractice in Puerto Rico, and personnel of medical associations that represent specific specialties were used to expand upon the information obtained in the quantitative surveys. Medical schools in Puerto Rico also provided additional data.

[4] See http://www.reis.com/learning/reportsamples/MetroTrend.pdf?DBA42709A1458F02C4.

The data collected from these primary research instruments were compared to secondary data obtained from government sources such as the US Bureau of Labor Statistics, the American Community Survey, CMS, the Puerto Rico Department of Health, as well as statistics maintained by the Colegio de Médicos-Cirujanos, in order to determine whether and to what degree the costs of medical practice in Puerto Rico may be underestimated by the indexing system used by CMS and to make relevant policy recommendations.

Study Conclusions

The Study makes the following germane conclusions, among others:

- "The average monthly rental cost for a doctor is $4,319 and for specialists it is $7,640. Those who pay mortgages report higher payments than the property could be rented for. Over half (55%) of doctors report they are paying higher rents this year. Of those paying higher rents, 63% report increases of over 10%. The high rents that doctors on the island are paying, and the fact that these rents are rising at a time when residential rents are stagnant raises questions about whether an index like that based on the American Community Survey, which averages all rents, reflects the real situation with commercial property in areas near hospitals, which are the properties doctors rent. While the American Community Survey shows stagnant rents in Puerto Rico, doctors are facing rising rents. This raises questions about whether the indexing system used is fair to Puerto Rican doctors with regard to rental costs of medical practice." (Pages 71-72)

- "The statistics from our study show that if a doctor is paying the average amount of rent for an office, the average doctor's electricity bill will add 26% to that rent, and the average bill for all utilities put together will add 39%. For PCPs [Primary Care Physicians] who generally earn less and rent smaller offices, utilities add a whopping 62% to monthly rental." (Page 74)

- "In the last five years roughly 70% of doctors in PR have maintained [malpractice] coverage of $100,000/$300,000. Although the amount of coverage has remained constant, doctors report an average increase in the cost of malpractice insurance of 32% between 2001 and 2006. Between 2006 and 2011, the average cost increased another 19%. The total percentage increase between 2001 and 2011 was 57%. The increase is obviously not due to increased coverage, because doctors and insurance representative are in agreement that coverage remains low and should increase. The increase is almost entirely due to increased premiums. 73% of doctors say the reason they don't have adequate coverage is because premiums are too high. The index for malpractice costs in Puerto Rico is based on data from the late nineties, which has never been updated. The index has to be revised to fairly assess the real costs of malpractice insurance in Puerto Rico. (Pages 74-75)

- "82% [of medical practitioners] said that the price of medical equipment is higher in Puerto Rico. 95% of these doctors attributed the higher cost to transportation and 58% mentioned lack of competition as an important factor. The mean estimate of how much shipping raises prices was 16%. This percentage is higher than the 10% to 15% mentioned by one representative of a medical equipment firm and 5% mentioned by another. The question of shipping costs requires a more thorough investigation to find out the real additional costs of transportation to the island, and determine whether the current policy of CMS to assume that medical equipment costs are the same is fair to overseas areas." (Page 77)

- 96% [of medical practitioners] said [total practice] costs are now much higher than in 2001 and 4% said they are higher. When asked about factors contributing to high costs, respondents mentioned low fees paid by health insurers (93%) and Medicare (78%) as well as increases in actual costs, including: electricity (93%), other utilities (87%), personnel costs (84%), medical supplies (84%), medical equipment (76%), and high rents (63%)." (Page 79)

- "82% [of medical practitioners] were dissatisfied with salary or remuneration in PR and 59% had thought about moving their practice elsewhere. The main reasons for moving elsewhere: economic reasons (96%), better working conditions (90%), higher fees from health insurers (90%) and higher Medicare fees (77%)." (Page 79)

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For all the foregoing reasons, I respectfully request that CMS make a reasonable upward adjustment, on either a temporary or enduring basis, to one or more of Puerto Rico's GPCIs in 2013, and not to defer action until 2014.

Sincerely,

Pedro R. Pierluisi
Member of Congress