

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO**



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Executive Director

BY ELECTRONIC MAIL

April 29, 2020

The Honorable Wanda Vázquez Garced
Governor of Puerto Rico

The Honorable Thomas Rivera Schatz
President of the Senate of Puerto Rico

The Honorable Carlos J. Méndez Núñez
Speaker of the House of Representatives of Puerto Rico

Dear Governor Vázquez Garced, President Rivera Schatz, Speaker Méndez Núñez:

We have become aware that House Joint Resolution 648 (“HJR 648”) and House Joint Resolution (“HJR 649”) were recently approved by the Legislature, and that Senate Joint Resolution 508 (“SJR 508”) was recently approved by the Senate.

HJR 648

HJR 648 orders, among other things, the issuance by the Puerto Rico Insurance Commissioner of any necessary regulations for health insurance companies to make advance payments to Health Facilities and Health Service Organizations for a term of ninety (90) days, which term may be extended for three additional months, for services not yet rendered or billed by such organizations.

HJR 649

HJR 649 orders, among other things, the Health Insurance Administration (“ASES” for its Spanish acronym) to require health insurance companies to make advance payments to Health Facilities and Health Service Organizations for a term of ninety (90) days, which term may be extended for three additional months, for services not yet rendered or billed by such organizations.

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SJR 508

SJR 508 orders ASES to establish budgeted payments, for the next one hundred eighty (180) days for providers of health services, which shall not be less than eighty (80) percent of the average claims experience of the last six (6) months of last year. It also authorizes ASES to make direct payments to health care providers, among other purposes.

Analysis

Based on our review of HJR 648, HJR 649 and SJR 508, it is the Oversight Board's understanding that these proposed measures are inconsistent with federal regulations issued by the Centers for Medicare and Medicaid Services ("CMS"). As a result, their enactment may jeopardize the grant of federal funds to the Commonwealth's Medicaid program, known as Plan Vital, as well as to private-sector health insurance and managed care organizations ("MCO"), exposing them to liquidity risks.

Under federal regulations, health insurance companies make payments based on the services rendered and billed by providers, and claims are paid in accordance with the terms set forth in the contracts between them. To order health insurance companies to make advance payments for services that have not been provided would be inconsistent with the Medicaid programs. Under CMS regulations, ASES may make interim payments, but only after approval of a State Plan Amendment by CMS. CMS has stated that such an interim payment would not be considered an advance payment prior to services being furnished, but rather represent interim payments for services provided that will be subject to final reconciliation.

Further, enactment of the above-stated measures would also put ASES at risk of non-compliance with the Certified Fiscal Plan. Requiring ASES to make advance payments not based on services rendered is also likely to significantly impede ASES' ability to achieve the Certified Fiscal Plan measure to reduce excess cost growth due to fraud, waste, and abuse and better tie cost to quality of care.

Additionally, substantial private sector support is available via the recently passed CARES Act which has made \$100 billion available to hospitals and other healthcare providers. Already \$30 billion of this amount has been distributed, of which facilities in Puerto Rico received \$42 million. The Oversight Board has communicated in a letter directly to the U.S. Department of Health and Human Services (HHS) the need to ensure that Puerto Rico is treated equitably in future distributions to help the medical provider community on Island manage the sudden influx of patients and financial losses due to postponement of procedures related to COVID-19. As of last Friday, we understand that HHS has begun the distribution of an additional \$20 billion of the general distribution to Medicare providers, and we understand that Medicare Advantage revenues have been taken into consideration in this tranche. As of April 28, 2020, we understand that \$39 million were allocated to Puerto Rico under this second distribution. In addition, small businesses and individual healthcare providers have access to the programs made available under the CARES Act via the Small Business Administration (SBA), including Payment Protection Program loans

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and Economic Injury Disaster Loans. We would expect Puerto Rico's healthcare providers to share in these outstanding substantial amounts of Federal assistance.

For the reasons stated above, these proposed measures, which seek to provide cash flow to health institutions, may jeopardize federal funds, thus having an adverse impact on the Commonwealth's revenues and the Certified Fiscal Plan. Accordingly, HJR 648, HJR 649 and SJR 508 should not be signed by the Governor.

The Oversight Board hopes that the Legislature and Executive Branch will comply with the Commonwealth's Certified Fiscal Plan and Certified Budget, as noncompliance impairs and defeats the purposes of PROMESA, thereby requiring the Oversight Board to invoke remedies thereunder to enable it to discharge its statutory duties.

Please be further advised that the Oversight Board reserves all its rights to nullify and enjoin enforcement of legislation pursuant to PROMESA sections 204(a), 108(a)(2) and 207.

Sincerely,



Natalie A. Jaresko

CC: Mr. Omar J. Marrero Díaz