



February 2021

# MEDICAID

## CMS Needs to Implement Risk- Based Oversight of Puerto Rico's Procurement Process

# GAO@100 Highlights

Highlights of [GAO-21-229](#), a report to congressional committees

## Why GAO Did This Study

States' and U.S. territories' Medicaid procurement processes can directly affect their ability to prevent fraud, waste, and abuse in the program. A 2019 federal indictment alleging fraudulent Medicaid procurements in Puerto Rico has raised questions about the program's oversight.

The Consolidated Appropriations Act, 2020 includes a provision for GAO to review oversight of Puerto Rico's Medicaid procurement process and its use of competition. This report examines CMS oversight of Puerto Rico's procurement process from its initial steps through the award, and how it helps ensure competition. GAO reviewed federal regulations, guidance, and Puerto Rico's December 2020 procurement reform plan; interviewed Puerto Rico and federal officials; and reviewed eight awards that represented about 97 percent of the costs of Puerto Rico's procurements in effect as of April 2020. These procurements were selected based on variation in cost, use of competition, and other factors. GAO assessed whether CMS addressed risks in Puerto Rico's procurement process by reviewing selected procurements against certain federal standards that apply to other non-federal entities and aim to mitigate the risk of fraud, waste, and abuse. GAO also assessed CMS's policies and procedures against federal internal control standards.

## What GAO Recommends

GAO recommends that CMS implement risk-based oversight of the Medicaid procurement process in Puerto Rico. The Department of Health and Human Services concurred with this recommendation.

View [GAO-21-229](#). For more information, contact Carolyn L. Yocom at (202) 512-7114 or [YocomC@gao.gov](mailto:YocomC@gao.gov).

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### CMS Needs to Implement Risk-Based Oversight of Puerto Rico's Procurement Process

## What GAO Found

Like other U.S. territories and states, Puerto Rico implements major functions of its Medicaid program by procuring services from contractors, such as the delivery of managed care services to Medicaid beneficiaries. In 2018, procurement costs represented \$2.4 billion of Puerto Rico's \$2.5 billion in total Medicaid expenditures. A 2019 federal indictment alleging Puerto Rico officials unlawfully steered Medicaid contracts to certain individuals has raised concerns about Puerto Rico's Medicaid procurement process, including whether this process helps ensure appropriate competition.

The Centers for Medicare & Medicaid Services (CMS), within the Department of Health and Human Services, is responsible for overseeing the Medicaid program. CMS requires states and territories to use the same process for Medicaid procurements as they do for their non-federal procurements. However, CMS has not taken steps to ensure Puerto Rico has met this requirement. Instead, CMS has relied on Puerto Rico to oversee the territory's procurement process and to attest to its compliance. CMS approved Puerto Rico's attestation of compliance in 2004 and has not required subsequent updates. CMS officials told GAO that states and territories are in the best position to ensure compliance with their respective procurement laws.

GAO and others have found that competition is a cornerstone of procurement. Using competition can reduce costs, improve contractor performance, curb fraud, and promote accountability. GAO reviewed selected Puerto Rico Medicaid procurements against federal procurement standards designed to promote competition and reduce risks of fraud. States and territories are generally not required to meet such standards. However, GAO and others have found that such standards can indicate whether a state's or territory's procurement process includes necessary steps to achieve fair competition.

GAO found that seven of the eight selected Puerto Rico procurements did not include important steps to promote competition and mitigate the risk for fraud, waste, and abuse, underscoring the need for federal oversight.

- **Competitive procurements.** The requests for proposals for two of the three competitive procurements GAO reviewed did not include certain information on factors used to evaluate proposals and make awards. In contrast, Puerto Rico's managed care procurement—the largest procurement reviewed— included this information.
- **Noncompetitive procurements.** None of the five noncompetitive procurements GAO reviewed documented circumstances to justify not using competitive procurements, such as a lack of competition or an emergency. Puerto Rico officials explained that territorial law allows noncompetitive procurement for professional services regardless of circumstances.

Because CMS does not oversee Puerto Rico's procurement process, the agency lacks assurance that Puerto Rico's Medicaid program is appropriately managing the risk of fraud, waste, and abuse. Procurements that did not include important steps to promote competition could have unnecessarily increased Medicaid costs, reducing funding for Medicaid services to beneficiaries.

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## Abbreviations

ASES	Puerto Rico Administración de Seguros de Salud
CMS	Centers for Medicare & Medicaid Services
DOH	Puerto Rico Department of Health
HHS	Department of Health and Human Services
MCO	managed care organization

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February 5, 2021

Chairman  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce  
House of Representatives

Among the U.S. territories, Puerto Rico administers the largest Medicaid program, covering over 1 million beneficiaries at a total cost of \$2.5 billion in 2018.<sup>1</sup> Similar to states, the federal government and U.S. territories jointly fund Medicaid to provide health care coverage for low-income and medically needy populations. However, unlike states that receive open-ended federal matching funds, Puerto Rico can access federal funds for Medicaid up to an annual limit. Roughly 40 percent of Puerto Rico's population qualifies for Medicaid, and over the past decade, Congress has provided the territory with increased federal funding.<sup>2</sup>

Like other states and territories, Puerto Rico implements major functions of its Medicaid program by procuring a variety of administrative and other services from contractors. In calendar year 2018, states and territories paid contractors at least half of the \$619 billion in total Medicaid expenditures. In that same year, Puerto Rico paid contractors at least 96 percent (\$2.4 billion) of its \$2.5 billion in total Medicaid expenditures,

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<sup>1</sup>Five territories of the United States participate in the Medicaid program: American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. See GAO, *Medicaid and CHIP: Increased Funding in U.S. Territories Merits Improved Program Integrity Efforts*, [GAO-16-324](#) (Washington, D.C.: Apr. 8, 2016).

<sup>2</sup>Most recently, for fiscal years 2020 and 2021, Congress provided additional federal funding for all territories. See Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, div. N, § 202, 133 Stat. 2534, 3103 (2019); Family First Coronavirus Response Act, Pub. L. No. 116-127, § 6009, 134 Stat. 178, 209 (2020).

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primarily to managed care organizations (MCO) for coverage of Medicaid services.<sup>3</sup>

A state's or territory's Medicaid procurement process can directly affect the efficient operation of its program and its ability to prevent fraud, waste, and abuse.<sup>4</sup> By promoting competition for procurements, states and territories can select contractors that provide the greatest value to their Medicaid programs. Competition also reduces the risk of fraud, waste, and abuse that—if left unabated—could increase procurement costs and reduce funding available for Medicaid services to beneficiaries.

In April 2016, we found little assurance that Puerto Rico and other territories' Medicaid funds were protected from fraud, waste, and abuse.<sup>5</sup> Since then, the Centers for Medicare & Medicaid Services (CMS)—the federal agency in the Department of Health and Human Services (HHS) that oversees Medicaid—and Puerto Rico have taken some steps to improve oversight of the territory's Medicaid program. These steps included increased oversight of program integrity and taking steps to improve program spending information. However, in July 2019, the Department of Justice indicted three individuals, including the former executive director of Puerto Rico's Administración de Seguros de Salud (ASES), which oversees the territory's procurements for Medicaid managed care services, for unlawfully steering Medicaid contracts to certain individuals.<sup>6</sup> These allegations have raised concerns about Puerto Rico's Medicaid procurement process, including whether it helps ensure appropriate competition, and prompted members of Congress to ask

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<sup>3</sup>Under managed care, states and territories typically procure from MCOs a specific set of Medicaid-covered services for Medicaid beneficiaries in return for a set payment per beneficiary, referred to as a capitated rate.

<sup>4</sup>The term "procurement" in this report refers specifically to the process of obtaining goods or services via government contract. Each state and territory must provide a Medicaid state plan that describes how it will administer its program according to methods that the Secretary of the Department of Health and Human Services (HHS) finds to be necessary for the program's proper and efficient operation. 42 U.S.C. § 1396a(a)(4)(A).

<sup>5</sup>See [GAO-16-324](#).

<sup>6</sup>U.S. Department of Justice, *Former Secretary Of Puerto Rico Department Of Education And Former Executive Director Of Puerto Rico Health Insurance Administration Indicted With Four Others For Conspiracy, Wire Fraud, Theft Of Government Funds, And Money Laundering*, (San Juan, Puerto Rico: July 10, 2019), accessed November 20, 2020, <https://www.justice.gov/usao-pr/pr/former-secretary-puerto-rico-department-education-and-former-executive-director-puerto-1>.

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additional questions about federal oversight of Puerto Rico's Medicaid program.

The Further Consolidated Appropriations Act, 2020 directs Puerto Rico to publish a Medicaid procurement reform plan by December 20, 2020, to combat fraud, waste, or abuse.<sup>7</sup> The act also includes a provision for us to review CMS's oversight of Puerto Rico's Medicaid procurement process, including whether procurements are subject to competition. This report examines the extent to which CMS oversees Puerto Rico's Medicaid procurement process and how this process helps ensure competition.

To examine the extent to which CMS oversees Puerto Rico's Medicaid procurement process and how this process helps ensure competition, we reviewed relevant federal regulations and CMS guidance. We focused on the procurement process beginning with the development of solicitations for proposals through the award; we did not examine the management of procurements after they were made. To supplement this information, we interviewed officials from CMS, Puerto Rico's Office of the Comptroller, and the two entities that administer Puerto Rico's Medicaid program: Puerto Rico's Department of Health (DOH) and the Administración de Seguros de Salud. DOH manages Medicaid eligibility determinations, provider enrollment, and other administrative functions; and ASES oversees procurements with MCOs, through which all Medicaid beneficiaries in Puerto Rico obtain services.

Additionally, we selected a non-generalizable sample of eight Puerto Rico procurements (three competitive and five noncompetitive) that were in effect as of April 1, 2020.<sup>8</sup> These procurements represented about 97 percent of the total costs of Puerto Rico's Medicaid procurements in effect

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<sup>7</sup>Pub. L. No. 116-94, div. N, § 202(a)(2), 133 Stat. 2534, 3105 (2019) (codified at 42 U.S.C. § 1308(g)(7)(A)(iii)). Puerto Rico provided us with a copy of this plan on December 18, 2020. In this plan, Puerto Rico identifies opportunities for procurement reform related to competition and transparency, among other areas, and identifies priority initiatives to complete by September 2021. The plan further notes that implementation of these procurement reforms is dependent on CMS approval, as well as funding from CMS and Congress to support needed resources.

<sup>8</sup>To select these procurements, we obtained a list of Puerto Rico's Medicaid contracts in effect as of April 1, 2020, from DOH and ASES and compared it to a list of contracts provided by CMS. We initially selected nine procurements for review, but excluded one procurement after determining that DOH conducted it through a sealed bid process. A single procurement can result in the award of multiple contracts.

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at that time. We selected these procurements based on variation in the use of competition and procurement amounts, among other factors.<sup>9</sup> We reviewed DOH and ASES documentation of the processes used to make these eight procurements. Specifically, we identified the extent to which they were consistent with federal standards within the uniform administrative requirements for federal awards to non-federal entities as implemented by HHS.<sup>10</sup> We selected federal procurement standards related to (1) the documentation of procurement activities, such as the solicitation of proposals; and (2) noncompetitive procurements. Generally, states and territories are not required to meet these standards. However, these standards can indicate whether a state's or territory's procurement process includes necessary steps to achieve fair competition, which we and other organizations have found to be a cornerstone of procurement.<sup>11</sup>

To assess CMS's approach to overseeing Puerto Rico's procurement process, we relied on federal internal control standards.<sup>12</sup> We determined that the risk assessment, control activities, and information and communication components were significant to our objective, including the underlying principles that management should (1) consider the potential for fraud when identifying and responding to risk, and (2) design control activities to achieve its objectives and respond to risks. To make this assessment, we reviewed CMS's policies and procedures to

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<sup>9</sup>These other factors include (1) the agency making the procurement—DOH or ASES; and (2) the type of service or equipment being procured.

<sup>10</sup>Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule; 79 Fed. Reg. 75871 (Dec. 19, 2014) (codified at 45 C.F.R. Parts 75, 92 (2019)). These provisions apply to HHS grant and cooperative agreement programs, including Medicaid.

<sup>11</sup>See GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, [GAO-10-833](#) (Washington, D.C.: July 26, 2010). Selected standards align with provisions of the American Bar Association's 2000 Model Procurement Code for State and Local Governments, which was based on a national consensus among knowledgeable professionals, organizations, public agencies, and private firms as to the key elements of effective, transparent, yet stable procurement systems.

<sup>12</sup>See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). Internal control is a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved.



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determine the extent to which CMS's oversight of Puerto Rico's procurement process addresses risks of fraud, waste, and abuse.

We conducted this performance audit from March 2020 to February 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

HHS regulations generally require a state or territory to "follow the same policies and procedures it uses for procurements from its non-federal funds."<sup>13</sup> According to CMS officials, states and territories must attest in their Medicaid state plans to complying with this requirement. States and territories generally do not have to meet additional federal procurement standards that apply to other non-federal entities.<sup>14</sup> However, under HHS regulations, the agency may require a state or territory to comply with federal competition standards under limited circumstances, such as when the agency determines that the state's or territory's procurement process for certain procurements is an impediment to competition that could substantially impact project cost or the risk of failure.<sup>15</sup>

Although states and territories are generally not required to meet federal procurement standards, the standards were designed to promote competition, which we and other organizations have found to be a cornerstone of procurement. States and territories that adopt them could help ensure that they award procurements to contractors that provide the

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<sup>13</sup>See 45 C.F.R. § 75.326 (2019). States and territories must also follow federal requirements regarding the procurement of recovered materials and include certain contract provisions in every purchase order or other contract. See 45 C.F.R. §§ 75.331, 75.335 (2019).

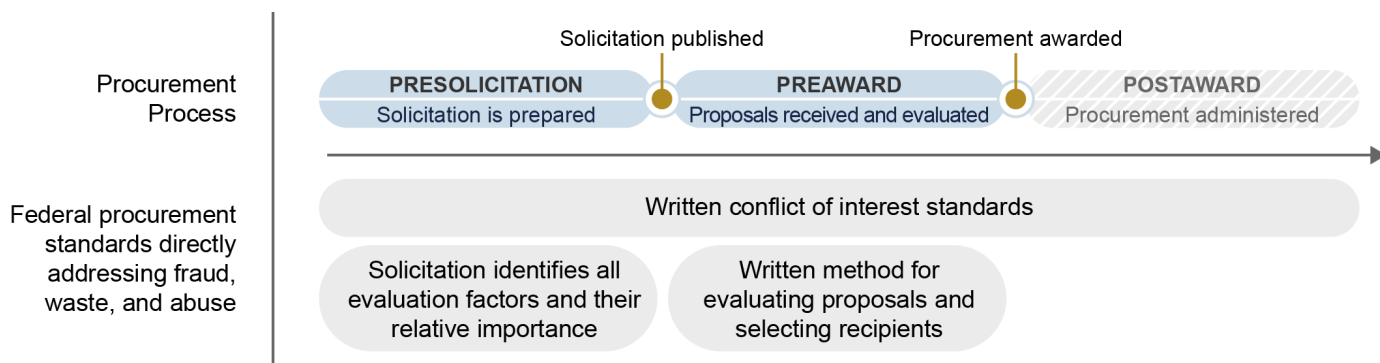
<sup>14</sup>These additional federal procurement standards apply to other non-federal entities, such as local governments, Indian tribes, and nonprofit organizations that participate in the Medicaid program. The federal standards we reviewed are located at 45 C.F.R. §§ 75.327-75.329 (2019).

<sup>15</sup>HHS may require states and territories to follow federal competition standards for two types of procurements: (1) information systems that support Medicaid programs, known as administrative data processing equipment and services, and (2) services from external quality review organizations for an annual review of the quality, timeliness, and access to health care services provided by states' MCOs. See 45 C.F.R. § 95.613(a) (2019); 42 C.F.R. § 438.356(e) (2019).

greatest value to their Medicaid programs and decrease the risks of fraud, waste, and abuse. As we previously found, competition helps reduce costs, improve contractor performance, curb fraud, and promote accountability.<sup>16</sup> The federal standards we selected include the following:

- **Written process for competitive procurements.** For competitive procurements, which typically involve the solicitation of proposals from multiple sources, certain steps must be documented in the proposal solicitations, proposal evaluations, and award selections.<sup>17</sup> (See fig. 1.)

**Figure 1: Steps in the Competitive Procurement Process and Examples of Federal Standards**



Source: GAO analysis of federal guidance and regulations, including 45 C.F.R. §§ 75.327-75.329. | GAO-21-229

Note: This review does not examine the post-award phase of the procurement process. In general, states and U.S. territories must follow the same process for Medicaid procurements that they use to make procurements using their non-federal funds. Other non-federal entities, including local governments, Indian tribes, and nonprofit organizations, must follow the more detailed federal procurement standards at 45 C.F.R. §§ 75.327-75.329 (2019). These standards were designed to promote competition and mitigate fraud, waste, and abuse.

- **Justification of noncompetitive procurements.** Certain circumstances must arise to justify the use of noncompetitive procurements, which typically involve solicitation of a proposal from only one source.<sup>18</sup> These circumstances include when (1) the item is available only from a single source; (2) an emergency does not provide sufficient time to conduct a competitive procurement; (3) CMS expressly authorizes noncompetitive procurement; or (4) after

<sup>16</sup>See [GAO-10-833](#).

<sup>17</sup>See 45 C.F.R. §§ 75.328(c), 75.329(d) (2019).

<sup>18</sup>See 45 C.F.R. § 75.329(f) (2019).

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solicitation of a number of sources, competition is determined to be inadequate.

- **Conflict of interest standards.** The procurement process must be governed by written standards that prohibit employees from participating in the selection, award, or administration of a contract where they have a real or apparent conflict of interest.<sup>19</sup> Such conflicts might arise when employees awarding procurements or their immediate family have financial interests in companies being considered for procurement.

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## CMS Has Not Overseen Puerto Rico's Medicaid Procurement Process, Leaving the Program Vulnerable to Fraud, Waste, and Abuse

Puerto Rico must follow the same policies and procedures that it uses for procurements using non-federal funds.<sup>20</sup> According to CMS officials, the agency has not overseen compliance with this federal requirement, because states and territories are in the best position to ensure compliance with their respective procurement laws. CMS officials stated that the agency has treated Puerto Rico the same as states and other U.S. territories, as CMS has not overseen the Medicaid procurement process in any state or territory.<sup>21</sup>

In addition, states and territories must attest to compliance with this federal procurement requirement in their state plan. CMS officials said that they review these attestations when states or territories submit changes to the relevant portion of their state plans, but this occurs infrequently and CMS does not proactively initiate this process.<sup>22</sup> For example, in 2004, CMS approved an attestation by Puerto Rico through its state plan amendment submission, wherein the territory certified that it procures MCOs' services through an open, competitive process that is

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<sup>19</sup>See 45 C.F.R. § 75.327(c)(1) (2019).

<sup>20</sup>See 45 C.F.R. § 75.326 (2019).

<sup>21</sup>While beyond the scope of this review, the absence of CMS oversight of other states' and territories' Medicaid procurement process may have broader implications for program integrity.

<sup>22</sup>In addition, as it relates to procurements for information systems that support Medicaid programs, CMS officials said the agency does not review the procurement process, but does require prior approval for certain, related documents, such as advanced planning documents and requests for proposals. CMS officials told us they review documents for compliance with federal regulations at 45 C.F.R. Part 95, subpart F. For additional information on this review process, see GAO, *Medicaid Information Technology: Effective CMS Oversight and States' Sharing of Claims Processing and Information Retrieval Systems Can Reduce Costs*, [GAO-20-179](#) (Washington, D.C.: Sept. 9, 2020), 14-25.

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consistent with federal regulations.<sup>23</sup> This attestation had not been subsequently updated as of October 2020.

CMS officials told us that the agency has discretion in determining when it can exercise oversight of a state's or territory's compliance with federal procurement requirements. CMS officials told us that the agency does not have documented procedures specifying the circumstances under which it would take such oversight actions, reiterating that states and territories are in the best position to ensure compliance with their respective procurement laws. However, CMS officials did provide examples of actions the agency could take to address non-compliance if identified through program reviews or audits. In particular, CMS officials said the agency could provide technical assistance or withhold federal funding if a state or territory was not complying with federal requirements.

To determine how Puerto Rico's procurement process helps ensure competition, we reviewed eight selected Medicaid procurements to determine if Puerto Rico's process was consistent with the federal procurement standards we identified. While Puerto Rico's Medicaid procurement process is not required to meet these standards, the standards were designed to reduce fraud, waste, and abuse. These standards also promote competition, which could help reduce costs, improve contractor performance, curb fraud, and promote accountability. Not adhering to these standards can indicate whether a state's or territory's procurement process is an impediment to competition that could substantially impact costs—a circumstance under which CMS may impose competition standards for certain procurements.<sup>24</sup>

These eight procurements are comprised of three competitive and five noncompetitive procurements that collectively represent approximately 97 percent of the total costs of Puerto Rico's Medicaid procurements in effect as of April 1, 2020. (See table 1.)

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<sup>23</sup>Puerto Rico attested to following requirements at 45 C.F.R. Part 74, which refer to regulations requiring states and territories to follow the same policies and procedures that they use for procurements using non-federal funds. Since then, HHS has adopted new regulations moving Part 74 to Part 75 in title 45 of the Code of Federal Regulations.

<sup>24</sup>See 45 C.F.R. § 95.613(a) (2019).

**Table 1: Selected Puerto Rico Medicaid Procurements by Type and Agency**

Type of procurement (Number selected)	Selected procurements	
	Department of Health	Administración de Seguros de Salud
Competitive procurements (3)	<ul style="list-style-type: none"> <li>Eligibility &amp; enrollment system</li> </ul>	<ul style="list-style-type: none"> <li>Managed care organizations</li> <li>Managed care enrollment counselor</li> </ul>
Noncompetitive procurements (5)	<ul style="list-style-type: none"> <li>Independent verification and validation of eligibility &amp; enrollment system</li> <li>External quality review organization</li> </ul>	<ul style="list-style-type: none"> <li>Administrative consulting</li> <li>Actuarial services</li> <li>Public relations</li> </ul>

Source: GAO analysis of information from Puerto Rico’s Department of Health and Administración de Seguros de Salud. | GAO-21-229

Note: These eight procurements represent a non-generalizable sample of Puerto Rico Medicaid procurements that were in effect as of April 1, 2020. They represented approximately 97 percent of the total costs of Puerto Rico’s Medicaid procurements in effect at that time.

Our review of DOH and ASES documentation found that for seven of the eight selected procurements, Puerto Rico did not take important steps to enable or seek competition. The one exception was Puerto Rico’s Medicaid MCO procurement, which was the largest of our selected procurements.<sup>25</sup> As previously noted, Puerto Rico is not required to meet the federal procurement standards we reviewed.<sup>26</sup> However, these standards are significant, because they were designed to promote competition and reduce risks of fraud, waste, and abuse.

- One of three competitive procurements met all federal procurement standards reviewed.** Puerto Rico’s Medicaid MCO procurement—which resulted in nearly \$4.3 billion for procurements lasting between 2 and 3 years—had a documented process that was consistent with the federal standards we reviewed. Puerto Rico’s requests for proposals for the other two selected competitive procurements were not consistent with the federal standards we selected. Specifically, these two procurements did not include information about the relative importance of proposal evaluation factors. (See table 2.) Not including this information may compromise

<sup>25</sup>In addition to our review of selected procurements, we found that Puerto Rico had conflict of interest policies, which are required under federal procurement rules. 45 C.F.R. § 75.327(c)(1) (2019). Both DOH and ASES officials identified territorial law that (1) covers conflicts of interest in procurements; (2) governs relevant employees’ actions; and (3) provides for disciplinary actions for violations.

<sup>26</sup>While we did not examine post-award management, CMS officials said that the agency reviews Puerto Rico’s MCO contracts to ensure they include certain federally required provisions, such as termination procedures.

fair competition and agencies' ability to obtain proposals that are as responsive as possible, according to the American Bar Association's 2000 Model Procurement Code for State and Local Governments, which includes similar requirements.<sup>27</sup>

**Table 2: Three Puerto Rico Medicaid Competitive Procurements' Alignment with Certain Federal Standards**

Procurement description	Puerto Rico agency	Total procurement amount (dollars in millions)	Federal standards applicable to other non-federal entities' competitive procurement documentation <sup>a</sup>			
			All evaluation factors	Relative importance of all evaluation factors	Method for evaluation	Method for selection
Managed care organizations (MCO)	Administración de Seguros de Salud	4,346	✓	✓	✓	✓
Eligibility and enrollment system	Department of Health	43	✗	✗	✓	✓
MCO enrollment counselor	Administración de Seguros de Salud	23	✓	✗	✓	✓

Legend: ✓ = documented process reflects federal standards; ✗ = documented process does not reflect federal standards

Source: GAO analysis of data and documents from Puerto Rico's Department of Health and Administración de Seguros de Salud. | GAO-21-229

<sup>a</sup>Federal procurement standards summarized in this table do not apply to states and territories, including Puerto Rico, but apply to other non-federal entities, such as local governments. These standards appear at 45 C.F.R. §§ 75.329(d)(1) and 75.329(d)(3) and specify that (1) requests for proposals must identify all evaluation factors and their relative importance; and (2) the non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.

- **Noncompetitive procurements were inconsistent with federal procurement standards reviewed.** For the five selected noncompetitive procurements—which resulted in approximately \$15 million for procurements lasting less than 2 years—Puerto Rico did not document any of the justifications for forgoing competition included in the federal standards we selected. The federal standards allow for a noncompetitive process under specified circumstances,

<sup>27</sup>According to the American Bar Association, its Model Procurement Code makes it easier for companies to compete for procurements across the thousands of state and local jurisdictions that have adopted it. Similar to the federal standard for other non-federal entities at 45 C.F.R. § 75.329(d)(1) that “[r]equests for proposals must be publicized and identify all evaluation factors and their relative importance,” the American Bar Association explains that “[t]he Request for Proposals shall state the relative importance of price and other factors and subfactors, if any.” See, American Bar Association, Section of Public Contract Law, Section of State and Local Government Law, *The 2000 Model Procurement Code for State and Local Governments*, (2000).

such as when the item is available only from a single source.<sup>28</sup> For three of these procurements, ASES did not provide a justification of its use of a noncompetitive process, which would be required if these federal standards applied. For the two remaining procurements, DOH officials explained that they had previously used competitive procurement for similar awards to the selected contractors.<sup>29</sup> For the larger of these two procurements, DOH officials explained that they initially intended to conduct a competitive procurement, but did not because there was not enough time to carry out a competitive procurement process and competition was not required under Puerto Rico law. DOH and ASES officials told us that Puerto Rico law authorizes noncompetitive procurements for professional services, regardless of circumstances. Officials from Puerto Rico’s Office of the Comptroller confirmed this, while noting that they encourage the use of competition in procurements as a best practice. The selected noncompetitive procurements were for public relations and other services that may have been available from multiple contractors. (See table 3.)

**Table 3: Five Puerto Rico Medicaid Noncompetitive Procurements’ Alignment with Certain Federal Standards**

Procurement description	Puerto Rico agency	Total procurement amount (dollars in millions)	Federal standards applicable to other non-federal entities for noncompetitive procurements <sup>a</sup>			
			Only one source	Emergency limits competitive procurement	CMS expressly authorizes noncompetitive procurement	Competition is inadequate
Independent verification and validation	Department of Health	10.7	X	X	X	X
Administrative consulting	Administración de Seguros de Salud	1.7	X	X	X	X
Actuarial services	Administración de Seguros de Salud	1.3	X	X	X	X

<sup>28</sup>Federal standards specify four circumstances under which noncompetitive procurements can be awarded: (1) the item is available only from a single source; (2) an emergency does not provide sufficient time to conduct a competitive procurement; (3) CMS expressly authorizes noncompetitive procurement; or (4) after solicitation of a number of sources, competition is determined to be inadequate. 45 C.F.R. § 75.329(f) (2019).

<sup>29</sup>Federal regulations require states and territories to follow an open, competitive process in accordance with state law and regulations for procuring services from an external quality review organization. 42 C.F.R. § 438.356(e) (2019). DOH officials explained that they viewed their noncompetitive procurement for these services as a continuation of a competitive procurement awarded in 2013 that was awarded to the same contractor for a similar scope of work.

**Federal standards applicable to other non-federal entities for noncompetitive procurements<sup>a</sup>**

Procurement description	Puerto Rico agency	Total procurement amount (dollars in millions)	Federal standards applicable to other non-federal entities for noncompetitive procurements <sup>a</sup>			
			Only one source	Emergency limits competitive procurement	CMS expressly authorizes noncompetitive procurement	Competition is inadequate
Public relations	Administración de Seguros de Salud	0.8	X	X	X	X
External quality review organization	Department of Health	0.4	X	X	X	X

Legend: X = documented process does not reflect federal standards

Source: GAO analysis of data and documents from Puerto Rico's Department of Health and Administración de Seguros de Salud. | GAO-21-229

<sup>a</sup>Federal procurement standards summarized in this table do not apply to states and territories, including Puerto Rico, but apply to other non-federal entities, such as local governments. These standards appear at 45 C.F.R. § 75.329(f)(1)-(4) and specify four circumstances under which noncompetitive procurements can be awarded: (1) the item is available only from a single source; (2) an emergency does not provide sufficient time to conduct a competitive procurement; (3) the Centers for Medicare & Medicaid Services (CMS) expressly authorizes noncompetitive procurement; or (4) after solicitation of a number of sources, competition is determined to be inadequate.

Our review of selected Medicaid procurements shows that Puerto Rico has not taken actions designed to promote competition, such as those established in the federal standards applicable to other non-federal entities, which could adversely affect program integrity. Because CMS does not oversee Puerto Rico's procurement processes, the agency lacks assurance that the territory is appropriately managing the risk of fraud, waste, and abuse in its Medicaid procurements. This lack of oversight is inconsistent with federal internal control standards that require agencies to (1) consider the potential for fraud when identifying, analyzing, and responding to risks; and (2) design control activities to respond to risks. It is also inconsistent with the statutory requirement for CMS to ensure that Puerto Rico's methods of administering its Medicaid program ensure the efficient operation of the program.<sup>30</sup> CMS officials said they intend to review Puerto Rico's procurement reform plan.<sup>31</sup> As of November 2020, they had not documented how they will conduct this review, when it will be complete, or whether they will oversee Puerto Rico's implementation of its procurement reform plan.

<sup>30</sup>See [GAO-14-704G](#); 42 U.S.C. § 1396a(a)(4)(A).

<sup>31</sup>In November 2020, CMS officials said they were reviewing Puerto Rico's procurement of services from an external quality review organization for compliance with 42 C.F.R. § 438.356(e) (2019), which requires an open, competitive procurement process in accordance with state law and regulations.



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## Conclusions

Puerto Rico has spent billions of dollars through procurements to administer its Medicaid program. However, some of Puerto Rico's procurements do not reflect federal standards intended to promote competition. Additionally, because CMS has not provided oversight of Puerto Rico's Medicaid procurements, it is unable to determine whether the territory has processes in place to help ensure competition and minimize the risk of fraud, waste, and abuse. Absent such oversight, CMS and the Congress cannot be assured that Puerto Rico's Medicaid program is appropriately managing the risk of fraud, waste, and abuse.

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## Recommendation for Executive Action

The Administrator of CMS should take steps to implement ongoing, risk-based oversight of Medicaid procurement processes in Puerto Rico; such actions could include performing an assessment of competitive and noncompetitive procurement processes to identify risks and address them by promoting competition, as appropriate for the efficient operation of the Medicaid program. (Recommendation 1)

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## Agency Comments and Our Evaluation

We provided a draft of this report to HHS for comments. In its written comments, HHS concurred with our recommendation and indicated a commitment to work with Puerto Rico to improve its procurement processes. In doing so, HHS cited its current reviews of Puerto Rico's Contract Reform Plan and the territory's procurement of external quality review services, the latter of which was initiated as a result of our review. HHS described oversight tools it has to ensure state and territory compliance with applicable federal regulations and statutes, and reiterated that states and territories are in the best position to ensure that their procurement processes comply with applicable requirements. We maintain that fair competition is a cornerstone of procurement. Promoting competition could contribute to the efficient operation of Puerto Rico's Medicaid program and its ability to prevent fraud, waste, and abuse. HHS also provided technical comments, which we incorporated as appropriate. HHS's comments are reprinted in appendix I.

We also provided relevant portions of a draft of this report to Puerto Rico's Administración de Seguros de Salud (ASES) and Department of Health (DOH). Officials from ASES and DOH provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees, the Secretary of Health and Human Services, the Administrator of CMS, and other interested parties. In addition, the report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7114 or at [YocomC@gao.gov](mailto:YocomC@gao.gov). Contact points for our Office of Congressional Relations and Office of Public Affairs can be found on the last page of this report. Other major contributors to this report are listed in appendix II.

A handwritten signature in black ink, appearing to read "Carolyn L. Yocom". The signature is fluid and cursive, with a long horizontal stroke at the end.

Carolyn L. Yocom  
Director, Health Care

# Appendix I: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

January 13, 2021

Carolyn Yocom  
Director, Health Care  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Ms. Yocom:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "*MEDICAID: CMS Needs to Implement Risk-Based Oversight of Puerto Rico's Procurement Process*" (Job code 104218/ GAO-21-229).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

**Sarah C.  
Arbes -S** Digitally signed by  
Sarah C. Arbes -S  
Date: 2021.01.12  
15:10:53 -05'00'

Sarah C. Arbes  
Assistant Secretary for Legislation

Attachment

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**Appendix I: Comments from the Department of  
Health and Human Services**

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**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN  
SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT  
REPORT ENTITLED – MEDICAID: CMS NEEDS TO IMPLEMENT RISK-BASED  
OVERSIGHT OF PUERTO RICO'S PROCUREMENT PROCESS (GAO-21-229)**

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on the GAO's draft report on Medicaid contracting in Puerto Rico.

Both states and the Centers for Medicare & Medicaid Services (CMS) share responsibility for operating Medicaid programs consistent with title XIX of the Social Security Act (the Act) and ensuring its overall fiscal integrity. The Federal-State partnership is central to ensuring the proper and efficient administration of the Medicaid program and CMS will continue to work with Puerto Rico, as it does with all other states and territories, to ensure compliance with the applicable contracting regulations. As the direct administrators of their Medicaid programs, states and territories are in the best position to ensure that their procurement processes comply with the applicable state requirements. As detailed in the GAO's report, HHS regulations generally require a state or territory, including Puerto Rico, to follow the same policies and procedures used for procurements from its non-Federal funds. While there are instances when CMS has required states and territories to comply with additional requirements that apply to other non-Federal entities, such as local governments and nonprofit organizations, they are limited only to procurements for External Quality Review Organization (EQRO) services<sup>1</sup> and Automatic Data Processing (ADP) equipment and services.<sup>2</sup>

As stated in the GAO's report, the Federal standards, within the uniform administrative requirements for Federal awards to non-Federal entities, do not apply to states and territories. CMS appreciates the GAO's previous work that found that competition reduces costs, improves contractor performance, curbs fraud, and promotes accountability; however, the sample of eight Puerto Rico procurements in the GAO's review were assessed against Federal procurement standards that do not apply to states or territories. Further, it is important to note that the GAO did not find any issues with Puerto Rico's Medicaid Managed Care Organization procurements, which accounted for the majority of the territory's Medicaid expenditures paid to contractors from the GAO's sample of eight contracts in effect as of April 2020.

As noted in the GAO's report, CMS utilizes Medicaid State Plans to require and assess adherence to relevant regulations and statutes. The State Plan serves as an agreement between a state or territory and the Federal government that sets out groups of individuals to be covered, services to be provided, methodologies for providers to be reimbursed, and the administrative activities that are underway in the state or territory. Through the State Plan, or a State Plan Amendment, states and territories attest to being in compliance with the applicable provisions of 45 C.F.R. § 75 in order to be eligible to receive Federal Financial Participation (FFP). Once states and territories amend their State Plans to incorporate the appropriate attestations for compliance with federal requirements, they are not required to make further updates unless a programmatic change is proposed. In addition to requiring a state or territory to follow the same policies and procedures used for procurements from its non-Federal funds,<sup>3</sup> these regulations

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<sup>1</sup> 42 C.F.R. § 438.356(e)

<sup>2</sup> 45 C.F.R. § 95.611

<sup>3</sup> 45 C.F.R. § 75.326

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED – MEDICAID: CMS NEEDS TO IMPLEMENT RISK-BASED OVERSIGHT OF PUERTO RICO'S PROCUREMENT PROCESS (GAO-21-229)**

also ensure that once awarded, contracts will contain the necessary provisions related to various environmental and employee protection laws.<sup>4</sup>

CMS conducts regular oversight of states and territories, including program reviews<sup>5</sup> and audits.<sup>6</sup> Through these oversight activities, if CMS becomes aware that a state or territory is not in compliance with the approved State Plan, pursuant to 42 C.F.R. § 430.32, the agency is able to review a state or territory's policies and procedures, conduct an on-site review of selected aspects of agency operations, or examine samples of individual case records. Generally, one of the first options exercised by CMS is to offer and provide technical assistance to the state or territory, which may include an assessment to determine the root cause of the noncompliance and explore available options to help bring the program back into compliance. This initial approach may require the state to develop a corrective action plan; however, should the state fail to come into compliance with the approved State Plan, CMS may pursue the withholding of FFP.<sup>7</sup> Further, as a result of the GAO's review, CMS has already begun reviewing Puerto Rico's procurement of services from an EQRO to ensure that an open and competitive procurement process was conducted, as is required in the Medicaid managed care regulations at 42 C.F.R. § 438.356(e), and will explore available options to address any compliance issues found.

As required by the Consolidated Appropriations Act of 2020, Puerto Rico submitted its Contract Reform Plan to Congress on December 18, 2020. The Puerto Rico Department of Health and the Puerto Rico Health Insurance Administration collaborated on the plan. Phase I of the plan (January – September 2021) includes planning activities critical to the successful implementation of the plan which includes a number of priority initiatives, and phase II (October 2021 and beyond) focuses on additional initiatives to optimize the contracting process as well as tracking and reporting of metrics. Puerto Rico intends to submit an annual progress report to Congress as an addendum to the existing annual report beginning in 2022, and will provide a quarterly status report to CMS identifying progress on the Contracting Reform Plan. CMS is currently reviewing the plan against the applicable regulatory and statutory requirements and Puerto Rico's approved State Plan.

**Recommendation**

The Administrator of CMS should take steps to implement ongoing, risk-based oversight of Medicaid procurement processes in Puerto Rico; such actions could include performing an assessment of competitive and noncompetitive procurement processes to identify risks and address them by promoting competition, as appropriate to ensure efficient operation of the program.

**HHS Response**

CMS concurs with this recommendation and will take steps to implement risk-based oversight of Medicaid procurement processes in Puerto Rico. In considering risk-based oversight, it is important to note that the GAO did not find any issues with Puerto Rico's Medicaid Managed

<sup>4</sup> 45 C.F.R. § 75.335

<sup>5</sup> 42 C.F.R. §430.32

<sup>6</sup> 42 C.F.R. §430.33

<sup>7</sup> 42 C.F.R. §430.35

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**Appendix I: Comments from the Department of  
Health and Human Services**

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**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN  
SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT  
REPORT ENTITLED – MEDICAID: CMS NEEDS TO IMPLEMENT RISK-BASED  
OVERSIGHT OF PUERTO RICO'S PROCUREMENT PROCESS (GAO-21-229)**

Care Organization procurements, which accounted for the majority of the territory's Medicaid expenditures paid to contractors during the review period. As previously stated, CMS is currently reviewing Puerto Rico's Contract Reform Plan and assessing the plan against the applicable regulatory and statutory requirements. CMS will continue to monitor Puerto Rico's progress of the Contract Reform Plan for sufficient assurance of compliance with their approved State Plan. As a result of the GAO's review CMS has already begun reviewing Puerto Rico's procurement of services from an EQRO to ensure that an open and competitive procurement process was conducted, as is required by 42 C.F.R. § 438.356(e), and will explore available options to address any compliance issues found.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Carolyn L. Yocom at (202) 512-7114 or [yocomc@gao.gov](mailto:yocomc@gao.gov)

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## Acknowledgments

In addition to the contact named above, Susan Anthony and Leslie Gordon (Assistant Directors), Russell Voth (Analyst in Charge), Kelly Krinn, Drew Long, Werner Miranda-Hernandez, Ethiene Salgado-Rodriguez, Marie Suding, and Jennifer Whitworth made key contributions to this report.

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