UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, *et al.*, Debtors.[1]	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)
HON. WANDA VÁZQUEZ GARCED (in her official capacity), and THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY, Plaintiffs/Counterclaim-Defendants, v. THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, Defendant/Counterclaim-Plaintiff.	Adv. Proc. No. 20-00080-LTS in 17 BK 3283-LTS

(caption continued on next page)

[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

HON. WANDA VÁZQUEZ GARCED (in her official capacity), and THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY, Plaintiffs/Counterclaim-Defendants, v. THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, Defendant/Counterclaim-Plaintiff.	Adv. Proc. No. 20-000138-LTS in 17 BK 3283-LTS
HON. WANDA VÁZQUEZ GARCED (in her official capacity), and THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY, Plaintiffs/Counterclaim-Defendants, v. THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, Defendant/Counterclaim-Plaintiff.	Adv. Proc. No. 20-00083-LTS in 17 BK 3283-LTS
HON. WANDA VÁZQUEZ GARCED (in her official capacity), and THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY, Plaintiffs/Counterclaim-Defendants, v. THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, Defendant/Counterclaim-Plaintiff.	Adv. Proc. No. 20-00084-LTS in 17 BK 3283-LTS

HON. WANDA VÁZQUEZ GARCED (in her official capacity), and THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY, Plaintiffs/Counterclaim-Defendants, v. THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, Defendant/Counterclaim-Plaintiff.	Adv. Proc. No. 20-00085-LTS in 17 BK 3283-LTS

DECLARATION OF PHILIP ELLIS, PH.D.

I, Philip Ellis, hereby declare:

Qualifications

1. My name is Philip Ellis. I am the President of Ellis Health Policy, Inc., and I serve as an independent consultant on health policy issues and economic analysis, with clients in the pharmaceutical and insurance industries.

2. I received a bachelor's degree in economics from Stanford University, a master's degree in public policy from Harvard University's Kennedy School of Government, and a Ph.D. in economics from the Massachusetts Institute of Technology. A true and accurate copy of my resume is attached hereto as **Appendix A**.

3. Through more than two decades of experience working on health care policy issues, in both the public and private sectors, I have developed a broad range of expertise, covering areas that include prescription drug pricing and financing as well as Medicare, Medicaid, and private payments to providers of care and the factors affecting those payments.

4. Most of my career has been spent in the federal government analyzing health care issues and policies. I worked for more than 12 years at the Congressional Budget Office (the "CBO") – the non-partisan agency responsible for providing cost estimates for legislation to the U.S. Congress as that legislation is being debated.

5. I began my career at the CBO as a Senior Analyst in 2002 and was a key member of the team that generated numerous estimates of the costs of proposals to add a drug benefit to Medicare, up through the enactment of Part D in December 2003. After that, I wrote a report providing a detailed explanation of the agency's final estimate.

6. In subsequent years, I worked on analyses of a wide range of health care issues. In 2008, I was promoted to the position of Unit Chief and in that capacity I led the team modeling the health insurance provisions of the Affordable Care Act (the "ACA") and related proposals that

were considered during the health reform debate of 2009-2010. More recently, I managed several projects at CBO using claims data to analyze and compare provider payment rates under commercial insurance, the Medicare Advantage program, and traditional Medicare. I also coauthored a report on the determinants of private insurance premiums and the effects of federal subsidies on those premiums.

7. Over the years, I have regularly presented the results of CBO's estimates and analysis to Congressional staff and have made numerous presentations to various audiences on a broad range of topics in health care.

Scope of Engagement

8. At the request of the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), I conducted an analysis of Act No. 138 of 2019 ("Act 138"), a recently enacted law related to health care in the Commonwealth of Puerto Rico (the "Commonwealth").

9. My analysis focused on whether Act 138 may: (*i*) impact the Commonwealth's fiscal plans and budgets by reducing competition or otherwise; and (*ii*) affect the ability of the Commonwealth's residents to access affordable healthcare.

10. As part of my work, I reviewed, and am familiar with: (*i*) the fiscal plan for the Commonwealth certified on May 9, 2019 (the "2019 Fiscal Plan"); (*ii*) the fiscal plan for the Commonwealth certified on May 27, 2020 (the "2020 Fiscal Plan" and, together with the 2019 Fiscal Plan, the "Fiscal Plan"); (*iii*) the Commonwealth budget certified on June 30, 2019 (the "2020 Certified Budget"); and (*iv*) the Commonwealth budget certified on June 30, 2020 (the "2021 Certified Budget" and, together with the 2020 Budget, the "Certified Budget").

11. I was not asked to quantify the effects of Act 138 on the Fiscal Plan and Certified Budget, but rather for a qualitative assessment of the following: (*i*) whether the Act 138 could

increase the costs of health care in Puerto Rico; (*ii*) whether such costs would be borne by the Commonwealth; and (*iii*) whether additional costs, if any, were anticipated in the Fiscal Plan.

12. I submit this Declaration in connection with the Oversight Board's Motion for Summary Judgment in the adversary proceeding styled *Vázquez Garced v. Fin. Oversight & Mgmt. Bd. for P.R.*, No. 20-ap-00082-LTS (D.P.R.) based on my personal knowledge, training and experience, my detailed review of the Act 138, and my conversations with staff at The Brattle Group who have worked at my direction and are being compensated for their time.

Summary of Conclusions

13. Based on my review of Act 138, I have reached the following conclusions:

14. Act 138 will almost certainly increase costs for private insurance plans and Medicaid plans in Puerto Rico by prohibiting those plans from excluding doctors, hospitals, and other providers of care from the plans' networks, and thereby reducing incentives for such providers to compete on price.

15. Increases in costs for health plans in Puerto Rico, such as managed care organizations ("MCOs"), will adversely affect the fiscal position of the Commonwealth by increasing spending on Medicaid and reducing income tax revenues (due to increases in costs for employer-sponsored insurance). Act 138 may also increase the costs borne by the Commonwealth in the provision of subsidized insurance to public sector employees and their families.

16. These additional costs attributable to Act 138 are not accounted for in the Fiscal Plan.

Analysis of Act 138 Related to Managed Care Organizations

17. On August 1, 2019, then-Governor Ricardo Rosselló signed into law Act 138.

18. Act 138 affects the arrangements between health plans, such as MCOs, and providers by requiring the plans to accept into their networks any provider that is willing to apply

for inclusion, regardless of the prices such providers charge for medical services or the total cost of the care they provide, as long as the provider is properly credentialed and not convicted of specified offenses.

19. In other words, under Act 138, health plans will not have the discretion to reject provider applicants based on price or efficiency, nor can a health plan later discontinue its contract with a provider without just cause.[2] In health policy circles, such legislation is known as an "any willing provider" law.[3] In the absence of such laws, health plans can and do exclude providers (or discontinue contracts with them) if providers charge overly high prices or if they have an overly expensive practice style (such as ordering unjustifiable excessive tests).

20. Act 138 will almost certainly increase costs for private insurance plans and Medicaid plans in Puerto Rico by prohibiting those plans from excluding doctors, hospitals, and other providers of care from their networks. In turn, Act 138 decreases the incentives for doctors, hospitals, and other providers to compete on the total cost of care they provide.

21. Act 138's prohibition will have at least two effects on the total cost of care provided (which is the product of the quantity of medical services provided and the unit price of those services).

22. First, it is quite likely to increase the quantity of medical services covered by the plans. Some of the providers allowed into plans' networks as a result of Act 138's prohibition against exclusion may have originally been excluded because they have more expensive practice patterns; for example, these providers may order more tests or generate more surgical

[2] *See* Act 138, Section 1 and Act 138, Section 2.

[3] Hellinger, Fred J. (1995**)** **I**. SPECIAL REPORT: Any-Willing-Provider And Freedom-Of-Choice Laws: An Economic Assessment, *Health Affairs. Vol 14 No 4.* https://doi.org/10.1377/hlthaff.14.4.297

complications. Hence, prohibiting plans from excluding these providers can be expected to increase costs.

23. Second, the prohibition is quite likely to raise prices for care in Puerto Rico (that is, provider payment rates). This effect will arise because the prohibition makes it more difficult for health plans to establish narrow networks of providers and negotiate lower payment rates for those providers in exchange for a higher volume of patients. As a result of Act 138, health plans will probably have to pay higher prices to providers broadly across their networks, relative to the prices that they would have paid in the absence of Act 138.

24. That upward pressure on prices is highly likely to arise in the treatment of Medicaid patients.[4] In part, this is because the standard fee schedule for Medicaid providers was relaxed in 2017 "in response to a sharp increase in emigration of specialty providers that was hindering delivery of necessary care." 2019 Fiscal Plan at 115. That fee schedule expired in September 2019. 2019 Fiscal Plan at 29, 115. There is no longer a fee schedule in place.

25. In the absence of a fee schedule, payment rates depend importantly on the relative bargaining power of MCOs and providers. By weakening the bargaining position of MCOs, Act 138 is very likely to yield higher payment rates.

26. Based on my review of the Fiscal Plan, I know that it does not include a fixed schedule of fees or a cap on fees for services provided to Medicaid patients, and that the Oversight Board does not plan to recommend the implementation of such controls.

[4] Medicaid is the most common source of coverage in Puerto Rico. According to one recent survey, Medicaid enrolled 48 percent of the population in 2018. Private coverage obtained through an employer or purchased individually was the next largest source, with 31 percent of the population. Medicare covered 14 percent and military-related coverage accounted for another 1 percent of the population. The remaining 6 percent of people were uninsured. *See* Kaiser Family Foundation, Health Insurance Coverage of the Total Population, https://tinyurl.com/y8q9m8q4 (accessed September 13, 2020).

27. Instead, the Fiscal Plan envisions adopting a floor on many providers' rates equal to 70 percent of Medicare's payment rate for the same service. 2020 Fiscal Plan at 212.

28. Such a floor – if implemented along with Act 138's disincentives for price competition – would allow prices to rise through the negotiating process, resulting in increased Medicaid prices for the Commonwealth.

29. As discussed above, the increases in costs caused by Act 138 will initially be borne by the MCOs, but will generally be passed along to the people and organizations that ultimately pay for health insurance. In particular, the Commonwealth will bear higher costs for Medicaid and may incur higher costs for providing insurance to its public sector employees and their families. In addition, the Commonwealth would likely realize lower tax revenues as an indirect effect of higher premiums for employer-sponsored insurance; those higher premiums will reduce taxable wages and salaries.[5]

30. Act 138 may also increase costs for Medicare Advantage plans in Puerto Rico, which in turn would increase federal spending, but those effects would be indirect.

31. Medicare Advantage plans are exempt from Act 138 due to the federal preemption of most state-level regulations governing health plans.[6]

32. However, reduced competition based on costs and quality could lead to broad changes in providers' practice patterns that raise costs under all sources of insurance.

[5] For workers in Puerto Rico who receive health insurance from their employer and who pay income taxes to the Commonwealth, higher health insurance premiums will generally translate into lower taxable income and thus lower tax receipts for the Commonwealth.

[6] Centers for Medicare and Medicaid Services, "Medicare Managed Care Manual: Transmittal No. 7" (March 20, 2002), https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R7MCM.pdf.

33. A number of studies have found that such "spillovers" occur in the delivery of health care, partly because doctors tend to practice in the same way for all of their patients.[7]

34. As Act 138 makes it more difficult for MCOs in Puerto Rico to encourage the efficient provision of care, healthcare costs could rise broadly in the Commonwealth.

35. These increased costs associated with Act 138 are not anticipated by the Fiscal Plan.

Conclusions

36. Based on my review and analysis of Act 138, I conclude that it will in all probability increase health care costs in Puerto Rico.

37. These increases in health care costs will initially be paid by MCOs, but those costs will generally be passed along to their customers – which will raise premium payments and reduce revenues for the Commonwealth in ways not accounted for in the Fiscal Plan.

38. Such effects will arise because Act 138 restricts health plans in ways that will increase their spending directly, make it more difficult for them to control health care costs, or both.

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[7] Austin Frakt, "Medicare Advantage Spillovers," *Academy Health Blog* (October 14, 2016), https://www.academyhealth.org/blog/2016-10/medicare-advantage-spillovers. One of those studies found that increases in the share of Medicare beneficiaries enrolled in Medicare MCOs reduced spending in both the traditional (unmanaged) Medicare program and among commercially insured patients. Katherine Baicker, Michael E. Chernew, and Jacob A. Robbins, "The Spillover Effects of Medicare Managed Care: Medicare Advantage and Hospital Utilization," *Journal of Health Economics*, vol. 32, no. 6 (December 2013), https://www.sciencedirect.com/science/article/abs/pii/S0167629613001124.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 19th, 2020, in Vienna, VA.

Philip Ellis, Ph.D.

APPENDIX A: RESUME OF PHILIP ELLIS, PH.D.

Philip Ellis

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Experience:

5/18- **ELLIS HEALTH POLICY, INC.** Vienna, VA

As *President*, provide quantitative and economic analysis and modeling of health care policies; help in developing policy initiatives and analyses related to health insurance; and cost estimates for legislative proposals affecting Medicare and other health insurance programs, with a focus on prescription drug benefits. Drawing on expertise developed through more than two decades of public- and private-sector experience, analyze a broad range of issues in health care policy. Experience as an expert witness includes submitting an expert report and being deposed for the case *U.S. ex rel. Steven Scott v. Humana Inc.*

2/17-4/18 **ACUMEN, LLC** Washington, DC

As a *Senior Research Director*, ran the firm's growing DC office and managed a variety of projects providing data analysis and analytic support to the Centers for Medicare & Medicaid Services (CMS), the Medicaid and CHIP Payment and Access Commission (MACPAC), the Bipartisan Policy Center (BPC), and other clients. Successfully completed several studies regarding dually eligible enrollees for the Medicare-Medicaid Coordination Office in CMS and for MACPAC.

CONGRESSIONAL BUDGET OFFICE Washington, DC

4/13-2/17 **Health, Retirement, and Long-Term Analysis Division**

As *Senior Advisor* (2013-15) and *Deputy Assistant Director* (2015-17), led a team of analysts examining various aspects of the health sector. Managed and wrote reports examining trends in health insurance premiums and federal policies affecting them and explaining the budgetary and economic effects of repealing the Affordable Care Act (including a dynamic score accounting for economic feedback effects). Also managed several projects using claims data from the Health Care Cost Institute to analyze provider payment rates under commercial insurance and the Medicare Advantage program.

7/02-2/11 **Health and Human Resources Division**

As *Unit Chief* (2008-10) and *Deputy Assistant Director* (2010-11), led CBO's health team during the debate over the Affordable Care Act. Directed the analysis of provisions affecting private health insurance, worked with Congressional staff to

clarify proposals and communicate results, testified before Congressional committees, and drafted letters explaining CBO's findings. In October 2009, profiled in the *Washington Post* as "the most powerful guy you've never heard of in the health-care debate" (link). Received a special award for "Outstanding Leadership during CBO's Analysis of Health Reform Proposals, 2008-10."

As a *Senior Analyst* (2002-2008) at CBO, estimated the cost of proposals for a Medicare drug benefit and wrote a 2004 report explaining the final cost estimate for that program. Also authored reports examining the issues involved in assessing the comparative effectiveness of medical treatments and in analyzing the impact of high-deductible health plans. Analyzed issues surrounding and wrote testimony on a variety of other health topics including disease management, Medicaid and Medicare reform, and broader health care reform options. In 2008, organized, edited, and wrote sections of the agency's major report on *Key Issues in Analyzing Major Health Insurance Proposals*. Received Director's Awards in 2003 and 2008 for outstanding performance.

2/11-4/13 **UNITEDHEALTH GROUP** Washington, DC
Center for Health Reform and Modernization
As *Senior Vice President* in a small policy/strategy group led by Simon Stevens, advised on implementation of health reform legislation and development of new policy initiatives. Wrote an extensive working paper on issues and options for reforming payments to providers. Lead author of a 2012 *Health Affairs* article analyzing episode costs and care quality using United's commercial claims data.

7/01-7/02 **HEALTH AND HUMAN SERVICES DEPARTMENT** Washington, DC
Office of the Assistant Secretary for Planning and Evaluation
Senior Advisor to the Deputy Assistant Secretary for Health Policy and *Acting Director,* Division of Health Financing Policy. Worked closely with ASPE leadership and Congressional staff to develop Medicare reform and drug benefit legislation.

9/97-7/01 **TREASURY DEPARTMENT** Washington, DC
Economist and principal health policy analyst in the Office of Economic Policy. Designed the bidding system for private insurance plans in Medicare that was featured in the Clinton Administration's 1999 Medicare reform proposal – and was largely enacted into law in 2003 as the payment mechanism for Medicare Advantage plans. Working under Dr. Mark McClellan in 2001, helped develop the Bush Administration's framework for Medicare reform.

Education

MASSACHUSETTS INSTITUTE OF TECHNOLOGY Cambridge, MA

Ph.D. in Economics, September 1999. National Science Foundation fellowship. Concentration in public finance and industrial organization. Primary thesis advisor: Dr. Jonathan Gruber.

HARVARD UNIVERSITY Cambridge, MA
Kennedy School of Government
Master of Public Policy, June 1990. Kennedy Fellowship.

STANFORD UNIVERSITY Stanford, CA
B.A. with distinction majoring in both Economics and International Relations, June 1987. National Merit Scholarship. Phi Beta Kappa.

Reports & Publications

Private Health Insurance Premiums and Federal Policy, Congressional Budget Office, February 2016 (with Alice Burns); link.

Telemedicine, Congressional Budget Office Blog Post (with Lori Housman and Zoe Williams), July 29, 2015; link.

Budgetary and Economic Effects of Repealing the Affordable Care Act, Congressional Budget Office, June 2015 (with Ben Page); link.

Comparing the Costs of the Veterans' Health Care System With Private-Sector Costs, Congressional Budget Office, December 2014 (with Elizabeth Bass and Heidi Golding); link.

Farewell to Fee-for-Service? A "Real World" Strategy for Health Care Payment Reform, UnitedHealth Center for Health Reform and Modernization, December 2012; link.

"Wide Variation In Episode Costs Within A Commercially Insured Population Highlights Potential to Improve the Efficiency Of Care," *Health Affairs,* September 2012 (with Lewis G. Sandy, Aaron J. Larson, and Simon L. Stevens); link.

Selected CBO Publications Related to Health Care Legislation, 2009-2010, Congressional Budget Office, December 2010 (with many others); link.

Key Issues in Analyzing Major Health Insurance Proposals, Congressional Budget Office, December 2008 (with many others); link.

Research on the Comparative Effectiveness of Medical Treatments: Issues and Options for an Expanded Federal Role, Congressional Budget Office, December 2007; link.

"The Challenge of Rising Health Care Costs—A View from the Congressional Budget Office," *New England Journal of Medicine*, November 1, 2007; and "Addressing Rising Health Care Costs—A View from the Congressional Budget Office," *New England Journal of Medicine*, November 8, 2007 (both co-authored with Peter Orszag); link.

Consumer-Directed Health Plans: Potential Effects on Health Care Spending and Outcomes, Congressional Budget Office, December 2006; link.

Testimony on Medicaid Spending Growth and Options for Controlling Costs, Congressional Budget Office, July 13, 2006; link.

A Detailed Description of CBO's Cost Estimate for the Medicare Prescription Drug Benefit, Congressional Budget Office, July 2004; link.

Testimony & Presentations

The Future of National Health Insurance: Debates During a U.S. Presidential Election Year, appearance at the Harvard T.H. Chan School of Public Health, January 13, 2020; link.

Examining the Continuum of Coverage Proposals, presentation at the Alliance for Health Policy, October 18, 2019; link.

Health Care Reform Legislation Mark-up, Day 9, Part 1, appearance before the Senate Health, Education, Labor, and Pensions Committee, July 8, 2009; link.

House Health Care Legislation Financial Markup, Part 1, appearance before the House Ways and Means Committee, July 16, 2009; link.

Growth of Health Spending, presentation at the American Enterprise Institute, July 17, 2006; link.

APPENDIX B: DOCUMENTS RELIED UPON

Legal Documents:

- Oversight and Management Board, *2019 Fiscal Plan for Puerto Rico, Restoring Growth and Prosperity* (May 9, 2020), https://oversightboard.pr.gov/fiscal-plans-2/.
- Oversight and Management Board, *2020 Fiscal Plan for Puerto Rico, Restoring Growth and Prosperity* (May 27, 2020), https://oversightboard.pr.gov/fiscal-plans-2/.
- Oversight and Management Board, *FY20 Certified Budget for the Commonwealth of Puerto Rico,* (June 30, 2019).
- Oversight and Management Board, *FY21 Certified Budget for the Commonwealth of Puerto Rico,* (June 30, 2020).
- Act 138-2019

Publicly Available Documents:

- Hellinger, Fred J. (1995**) I**. SPECIAL REPORT: Any-Willing-Provider And Freedom-Of-Choice Laws: An Economic Assessment, *Health Affairs. Vol 14 No 4.* https://doi.org/10.1377/hlthaff.14.4.297
- Centers for Medicare and Medicaid Services, "Medicare Managed Care Manual: Transmittal No. 7" (March 20, 2002), https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R7MCM.pdf
- Austin Frakt, "Medicare Advantage Spillovers," *Academy Health Blog* (October 14, 2016), https://www.academyhealth.org/blog/2016-10/medicare-advantage-spillovers
- Katherine Baicker, Michael E. Chernew, and Jacob A. Robbins, "The Spillover Effects of Medicare Managed Care: Medicare Advantage and Hospital Utilization," *Journal of Health Economics*, vol. 32, no. 6 (December 2013), https://www.sciencedirect.com/science/article/abs/pii/S0167629613001124