

RALPH DLG. TORRES
Governor



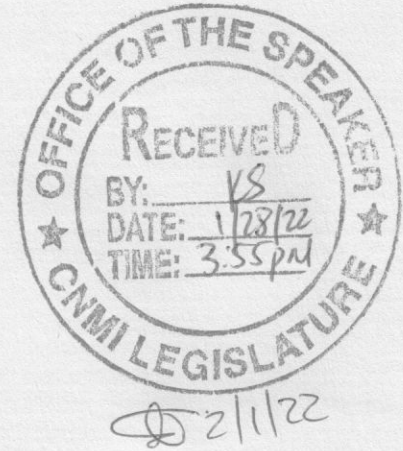
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

GOV. COMM. 22-108
(HOUSE)

The Honorable Edmund S. Villagomez
Speaker
House of Representatives
Twenty-Second Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

January 28, 2022

The Honorable Jude U. Hofschneider
President
The Senate
Twenty-Second Northern Marianas
Commonwealth Legislature
Saipan, MP 96950



Dear Speaker Villagomez and Senate President Hofschneider:

This is to inform you that I have vetoed **House Bill 22-53, HS1**, entitled, "To further enable recruitment, retention, and appropriate classification and compensation of Medicaid personnel; and for other purposes", which was passed by the House of Representatives and the Senate of the Twenty-Second Northern Marianas Commonwealth Legislature.

The Attorney General has advised of the numerous potential legal issues that would arise in the enactment of this legislation. This bill proposes to provide further guidance on the reprogramming authority of the Commonwealth Medicaid Agency (CMA) director and the employment of personnel for the CMA. If approved, the bill would create a narrow exception to the reprogramming restrictions in the Planning and Budgeting Act (PBA), as amended, with regard to the CMA. Funds appropriated to the CMA may be reprogrammed by the director regardless of whether the funds are for personnel or non-personnel expenditures. Presently, the PBA permits the reprogramming of funds from personnel or operations to non-personnel or operations but not vice versa. *See* 1 CMC § 7402(c)(3).

The bill also proposes to task the Office of Personnel Management (OPM) with establishing personnel positions for CMA, which fall under the Medicaid Enterprise Systems (MES). The MES positions are approved by the Centers for Medicare and Medicaid Services. OPM is further tasked with performing a review and study of the classification of personnel required by the Medicaid program with classification and compensation rates comparable to the Commonwealth Healthcare Corporation and private insurers and providers.

In recruiting prospective employees, OPM is directed to interview and employ individuals who have demonstrable and specific knowledge, skills, experience, training and abilities applicable in Medicaid administration and similar health care management and analytics programs. The bill,

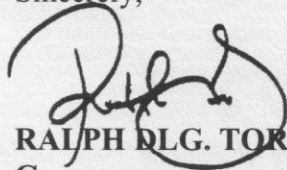
however, exempts MES employees from the civil service system; upon completion of OPM's classification and compensation study to be approved by the Medicaid Director, the MES employees may opt to convert to the civil service system and become civil service employees.

The A.G. makes clear that Legislature's lawmaking authority over the civil service system is not plenary. Only the Civil Service Commission has authority over the civil service system and is the sole authority to exempt positions from civil service classification. NMI Const. art. XX, § 1; *Manglona v. Civil Service Commission*, 3 N.M.I. 243, 251 (1992). The Legislature, however, may exempt positions entirely from the civil service system. *Id.*

To be consistent with the Constitution and the *Manglona* opinion, the MES positions to be "covered under Excepted Service Employment Contracts" must be positions that are exempted entirely from the civil service system as only the Legislature may exempt positions from the civil service system. Furthermore, the mandated classification and compensation study that will be used to establish the MES positions within the civil service system will require the approval of the Civil Service Commission and not only the CMA director. The Commission's approval is mandated by the Constitution.

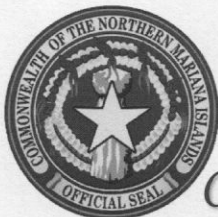
Due to the legal ambiguities in the language of the bill as expressed by the Attorney General and the similar concerns shared by the Office of Personnel Management, I must respectfully exercise my constitutional authority to veto this bill.

Sincerely,



RALPH DLG. TORRES
Governor

cc: Press Secretary
Special Assistant for Programs and Legislative Review
Special Assistant for Administration
Attorney General
Office of Public Auditor
Commonwealth Medicaid Office
Office of Personnel Management
Civil Service Commission



*Twenty-Second Legislature
of the
Commonwealth of the Northern Mariana Islands*

IN THE HOUSE OF REPRESENTATIVES

FIRST REGULAR SESSION

APRIL 23, 2021

REPRESENTATIVE LEILA H.F.C. STAFFLER OF SAIPAN, PRECINCT 5 (*for herself*, Representatives Roy C.A. Ada, Celina R. Babauta, Sheila J. Babauta, Angel A. Demapan, Joseph A. Flores, Christina M.E. Sablan, Patrick H. San Nicolas, Denita Kaipat Yangetmai, and Ralph N. Yumul,) in an open and public meeting with an opportunity for the public to comment, introduced the following Bill:

H. B. No. 22-53, HS1

AN ACT

**TO FURTHER ENABLE RECRUITMENT, RETENTION, AND
APPROPRIATE CLASSIFICATION AND COMPENSATION OF
MEDICAID PERSONNEL; AND FOR OTHER PURPOSES.**

The Bill was referred to the House Committee on Health and Welfare, which submitted Standing Committee Report 22-30; adopted 10/29/2021.

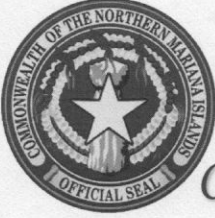
**THE BILL WAS PASSED BY THE HOUSE OF REPRESENTATIVES ON
FIRST AND FINAL READING, OCTOBER 29, 2021;**
with amendments in the form of H. B. No. 22-53, HS1 and transmitted to **THE SENATE.**

The Bill was referred to the Senate Committee on Health, Education and Welfare.
THE BILL WAS PASSED BY THE SENATE ON FIRST AND FINAL READING, DECEMBER 15, 2021;
without amendments and returned to **THE HOUSE OF REPRESENTATIVES.**

THE BILL WAS FINALLY PASSED ON OCTOBER 29, 2021.



Linda B. Muña, House Clerk



*Twenty-Second Legislature
of the
Commonwealth of the Northern Mariana Islands*

IN THE HOUSE OF REPRESENTATIVES

FIFTH DAY, SECOND REGULAR SESSION

OCTOBER 29, 2021

H. B. No. 22-53, HS1

AN ACT

**TO FURTHER ENABLE RECRUITMENT, RETENTION, AND
APPROPRIATE CLASSIFICATION AND COMPENSATION OF
MEDICAID PERSONNEL; AND FOR OTHER PURPOSES.**

**BE IT ENACTED BY THE TWENTY-SECOND NORTHERN
MARIANAS COMMONWEALTH LEGISLATURE:**

1 **SECTION 1. FINDINGS AND PURPOSES.**

2 Medicaid is a federal and state/territory program that provides needed health insurance
3 for eligible individuals and families with limited income and resources. In December 2019, the
4 U.S. Congress amended Title XIX to provide two-years of funding equivalent to amounts the
5 Commonwealth of the Northern Mariana (CNMI) would receive as a state. Congress further
6 increased the Federal Medical Assistance Percentage (FMAP) based on the same per-capita
7 income formula applied to all states, CNMI received a fair percentage of 83% in federal

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1 financial participation permitted by Title XIX. In doing so, the U.S. Congress established parity
2 in the financing of the program with all states.

3 At the same time, the U.S. Congress required the CNMI Medicaid program to establish
4 a Program Integrity Lead, make “reasonable and appropriate” progress to submit data to the
5 Transformed Medicaid Statistical Information System (T-MSIS), establish a Medicaid Fraud
6 Control Unit (MFCU), and submit reports directly to the U.S. Congress. The conditions are not
7 unique to the CNMI or other U.S. territories and applicable to all states. The Legislature further
8 understands that there are other requirements that CNMI and other state territories must comply
9 with and further anticipates that should the Commonwealth continue to receive the much-
10 needed levels of funding as all other states, the CNMI will be held to the same standards and
11 requirements of accountability for program administration and compliance applicable to all
12 states.

13 The Legislature, in passing SB 21-28 HS1 on March 15, 2020, recognized and
14 anticipated the importance, need, and legal requirements of the Medicaid program to comply,
15 as all states are required, with the provisions of Title XIX of the Social Security Act.
16 The Legislature anticipated these requirements as described in the findings of the bill which
17 became Public Law 21-28 on May 22, 2020.

18 The Legislature further recognized, in passing the Fiscal Year 2021 Budget and
19 Appropriations Bill, HB 21-124, SD2, CCSI, on October 1, 2020 (PL 21-35), the chronic
20 financial conditions of the CNMI government and developed a plan to meet the program and
21 financial matching requirements for the Medicaid program.

22 To balance the program needs for administration and medical reimbursement with the legal

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1 requirements of Title XIX, the Legislature established a new Business Unit (BU) entitled
2 Compliance and Medicaid Enterprise Systems (MES) and deemed the three BUs, including the
3 Medicaid Administration (1980) and Medicaid Reimbursement (1951), including the new
4 Compliance and Medicaid Enterprise Systems BU (1981), as a single program budget.

5 The Legislature further provided the authority for the Director of the Medicaid
6 program, as the expending authority, to reallocate the funds appropriated in the Act among the
7 Medicaid BUs. The Legislature, in this bill, further clarifies the authority of the Medicaid
8 Director to reprogram funds among the three Medicaid BU categories or any other BU the
9 Legislature may establish.

10 The Legislature further finds that positions for MES personnel approved and funded,
11 at minimum, with 50% to 90% federal funds, as approved by the Centers for Medicare and
12 Medicaid Services (CMS), have yet to be recruited and/or filled, resulting in delays to
13 important project activities and timelines. The Legislature further finds that specialized health
14 information technology and Medicaid data analytics personnel required by Medicaid are in
15 short supply and are in need to be established as Excepted Service Employment Contract
16 personnel until the Office of Personnel Management (OPM) is able to undertake a market-
17 based classification and compensation pricing study for Health Information Technology and
18 Data Analytics personnel that, at minimum, reflects the comparable classification and
19 compensation of like positions at the Commonwealth Healthcare Corporation.

20 Accordingly, the purposes of this legislation are to: (a) codify the authority of the
21 Medicaid Director to reprogram funding appropriated for the Medicaid program among the
22 established BUs; (b) direct the OPM to undertake a repricing study for eligibility, enrollment,

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1 claims processing, and health information technology personnel recruitment and retention
2 based on the classification and compensation of Commonwealth Healthcare Corporation; and
3 (c) authorize the OPM to hire Medicaid Enterprise Systems, data analysis, program integrity,
4 and auditing personnel under Excepted Service Employment Contracts until the market-based
5 repricing classification and compensation study is completed.

6 **SECTION 2. REPEAL AND RE-ENACTMENT.**

7 Method of Administration. Title 1 Government, Division 2 Executive Branch.
8 Article 12, Commonwealth Medicaid Agency, Section 20201, Method of Administration is
9 hereby repealed and the following is hereby enacted as sections 20201(a) and (b) that shall read
10 as follows:

11 “20201 Method of Administration.

12 (a) Method of Administration. The Commonwealth Medicaid Agency shall
13 employ methods of administration, as described in the plan in this Article, that are
14 necessary for the proper and efficient operation of the program.

15 (b) Reprogramming Authority. Notwithstanding 1 CMC § 7402,
16 Reprogramming Authority, or any other provisions in Commonwealth law, the Director
17 of the Commonwealth Medicaid Agency is the expenditure authority for Medicaid
18 funds and may reallocate and reprogram funds appropriated by law among the
19 Medicaid Program Business Units (BU), including, but not limited to, the Medicaid
20 Reimbursement – BU 1951, Medicaid Administration BU 1980, Medicaid Enterprise
21 Systems (MES) – BU 1981, or any other Medicaid BU established by the Legislature
22 or the Secretary of Finance. Funds appropriated to the Medicaid program BUs shall be

1 deemed a single budget reserved for the purposes of the Medicaid program, including
2 Personnel Expenses.”

3 **SECTION 3. AMENDMENT.**

4 Title 1 of the Commonwealth Code, Government Division 8 Public Employment, Part
5 1 Civil Service Act, Chapter 2 The Office of Personnel Management, is hereby amended by
6 creating new sections 8126, 8127, and 8128 that shall read as follows:

7 “8126. Establishment of Personnel Positions. Notwithstanding any other
8 provision in Commonwealth law, the Director of the Office of Personnel Management
9 will establish personnel positions required by the Commonwealth Medicaid Agency for
10 Medicaid Enterprise Systems (“MES”) approved by the Centers for Medicare and
11 Medicaid Services. The MES positions shall be based on comparable classification and
12 compensation rates of the Commonwealth Healthcare Corporation to ensure
13 recruitment and retention of qualified MES personnel and shall be exempt from
14 Government Salary Ceiling in Title 1 Section 8248 of the Commonwealth Code.
15 Notwithstanding any Executive Orders, Commonwealth laws, or other provisions to
16 the contrary, personnel of the Commonwealth Medicaid Agency shall work and remain
17 at the Commonwealth Medicaid Agency and shall not be transferred or assigned to any
18 other agencies, entities or departments.

19 8127. Classification and Compensation Review. Notwithstanding any other
20 provision in Commonwealth law, the Office of Personnel Management shall undertake
21 a classification and compensation review for classes of personnel required by the
22 Medicaid program, including eligibility and enrollment, medical claims examiners,

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1 health information technology, health data analytics, and compliance and program
2 management personnel positions required by the Commonwealth Medicaid Agency
3 and for Medicaid Enterprise System positions approved by the Centers for Medicare
4 and Medicaid Services. The classification and compensation for Medicaid positions
5 shall be based on comparable classification and compensation rates of the
6 Commonwealth Healthcare Corporation and private insurers and providers such as
7 federally qualified and funded community health centers.

8 8128. Development and Application of Related Work Equivalencies. In
9 determining the qualifications of applicants and personnel, the Office of Personnel
10 Management (“OPM”) will recruit applicants that have demonstrable and specific
11 knowledge, skills, experience, training and abilities, as applicable, in the classification
12 classes and areas of Medicaid, Medicare or Children’s Health Insurance Program
13 administration, health care systems financial operations, health information systems
14 and technologies, and health care data analytics and program management. The OPM
15 will develop and apply related work equivalencies and training with undergraduate
16 academic credit and use structured and graded interviews by qualified individuals to
17 assess applicant substantive knowledge, skills, experience, training, and abilities for
18 positions of Medicaid, Medicare and health insurance.”

19 **SECTION 4. REPEAL AND RE-ENACTMENT.**

20 Title 1 Government, Division 2 Executive Branch, Part 1. Organization of the
21 Executive Branch, Chapter 1 Office of the Governor, Article 12 Commonwealth Medicaid

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1 Agency, Section 20211, titled, "Standards of Personnel Administration" is hereby repealed and
2 re-enacted to read as follows:

3 "§ 20211. Standards of Personnel Administration. The Commonwealth
4 Medicaid Agency and its employees shall be covered by the Civil Service Act, except
5 that employees under Medicaid Enterprise System (MES) shall be covered under
6 Excepted Service Employment Contracts. MES employees may elect to convert to civil
7 service when a classification and a compensation study is completed by the Office of
8 Personnel Management and approved or modified by the Medicaid Director."

9 **SECTION 5. SEVERABILITY.**

10 If any provisions of this Act or the application of any such provision to any person or
11 circumstance should be held invalid by a court of competent jurisdiction, the remainder of this
12 Act or the application of its provisions to persons or circumstances other than those to which
13 it is held invalid shall not be affected thereby.

14 **SECTION 6. SAVINGS CLAUSE.**

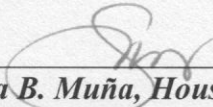
15 This Act and any repealer contained herein shall not be construed as affecting any
16 existing right acquired under contract or acquired under statutes repealed or under any rule,
17 regulation, or order adopted under the statutes. Repealers contained in this Act shall not affect
18 any proceeding instituted under or pursuant to prior law. The enactment of the Act shall not
19 have the effect of terminating, or in any way modifying, any liability, civil or criminal, which
20 shall already be in existence on the date this Act becomes effective.

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1 **SECTION 7. EFFECTIVE DATE.**

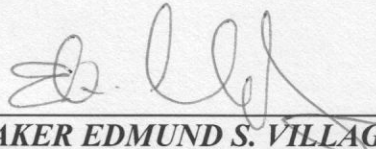
2 This Act shall take effect upon its approval by the Governor, or its becoming law
3 without such approval.

Attested to by:



Linda B. Muña, House Clerk

Certified by:



SPEAKER EDMUND S. VILLAGOMEZ
House of Representatives
22nd Northern Marianas Commonwealth Legislature

Disapproved this **28th** day of **January**, 2021



RALPH DLG. TORRES

Governor

Commonwealth of the Northern Mariana Islands