

October 19, 2021

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Florida Managed Medical Assistance Waiver Amendment Demonstration

Dear Secretary Becerra,

The undersigned organizations appreciate the opportunity to comment on Florida's request to amend its Managed Medical Assistance (MMA) Program section 1115 demonstration. The state is proposing that people eligible for Medicaid during pregnancy maintain coverage for 12 months postpartum, an increase from the 60 days of postpartum coverage currently available. Florida's proposal also seeks to permanently deny 3-month retroactive coverage to Medicaid beneficiaries for the duration of the approved demonstration period.

The proposal seeks to amend the state's demonstration, which was extended by your predecessor for almost ten years in the final days of his tenure, despite the fact that federal law does not permit ten-year extensions.¹ A waiver of retroactive coverage was also extended, conditioned on annual state statutory authority, which has now been extended by the state legislature.

In addition, at the eleventh hour, your predecessor approved an extension for almost ten years of the state's Low-Income Pool (LIP) program, which provides funds to providers serving low-income populations. The LIP was established nearly two decades ago when the state initially obtained demonstration authority to move a large share of its Medicaid beneficiaries into mandatory managed care, among other changes. Despite this transition to managed care having been accomplished some time ago, the LIP is currently funded at \$1.5 billion per demonstration year for the first five years of the extension. We explain our ongoing concerns with the underlying demonstration below.

Extending postpartum coverage for 12 months is a positive step, but should be done using state plan authority.

We strongly support the state's goal of reducing maternal mortality and morbidity for postpartum Medicaid members in Florida by providing 12 months of continuous Medicaid coverage. Medicaid and CHIP cover almost half of all births in the state of Florida.² Florida's proposal would reduce the likelihood of mothers becoming uninsured in the year following delivery by eliminating the 60-day postpartum cutoff. People would be able to maintain prescribed treatments and recommended check-ups without copayments for a longer period after giving birth without

¹ Social Security Act § 1115(a), (e), and (f)

² Medicaid and CHIP Payment and Access Commission (MACPAC), "Medicaid's Role in Financing Maternity Care," January 2020, available at <https://www.macpac.gov/wp-content/uploads/2020/01/Medicaid%E2%80%99s-Role-in-Financing-Maternity-Care.pdf>.

disruptions in their care . Research has shown that imposing copayments on low-income populations creates barriers to utilization of necessary care and increases financial burdens.³

There are necessary treatments and services people need to avoid pregnancy-related complications for up to one year after pregnancy. The abrupt 60-day cutoff can cause individuals with low incomes to become uninsured or underinsured shortly after delivery, limiting their access to necessary treatments, visits, and medications. A recent study tracking insurance rates in the six months after childbirth found 55 percent of women with Medicaid or CHIP coverage at time of delivery experience at least one month of uninsurance in that time period.⁴ These gaps in coverage are more likely in Florida where the parent eligibility level is only 31 percent of the federal poverty line; once low-income birthing people reach the 60-day cutoff they are at risk of having no insurance, especially those with incomes between 31 and 100 percent of the poverty line who fall in the Medicaid coverage gap

Eliminating the 60-day cutoff would ensure that postpartum people experience greater continuity of care, allowing them to maintain recommended check-ups and necessary treatments for a longer period, when they are still at risk for postpartum complications. Complications, which include cardiomyopathy and embolism, can occur up to a year after giving birth.

In Florida, as in the rest of the country, Black women experience unacceptably high rates of maternal mortality in the postpartum year.⁵ Black non-Hispanic women in Florida are almost 1.5 times as likely to die from pregnancy related causes than are White non-Hispanic women.⁶ Nationally, Black women and Native American women have the highest maternal mortality rates of any racial or ethnic group.⁷

While we strongly support this policy, we are unsure as to why the state is requesting demonstration authority when the state can achieve the same end utilizing the newly created state plan amendment (SPA) option which becomes effective on April 1', 2022. The state does not include an estimated date of implementation in its application, and it seems unlikely that the state would be able to enact this change prior to the effective date of the state option. However, if that is the state's intent, it is reasonable to grant the authority on the condition that the state moves to the SPA option when it becomes available.

Using state plan authority is the proper way to adopt this policy, and obviates the need to incorporate this new coverage into the budget neutrality calculations of the section 1115 demonstration.

³ Samantha Artiga, et al, "The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings," Kaiser Family Foundation, June 2017, available at <https://www.kff.org/medicaid/issuebrief/the-effects-of-premiums-and-cost-sharing-on-low-income-populations-updated-review-of-research-findings/>.

⁴ Jamie R. Daw, et al., "Women in the United States Experience High Rates of Coverage 'Churn' in Months Before and After Childbirth," *Health Affairs*, April 2017, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.1241>.

⁵ MACPAC, "Chapter 2: Advancing Maternal and Infant Health by Extending the Postpartum Coverage Period," March 2021, available at <https://www.macpac.gov/wp-content/uploads/2021/03/Chapter-2-Advancing-Maternal-and-Infant-Health-by-Extending-the-Postpartum-Coverage-Period.pdf>.

⁶ Florida Department of Health, "Florida's Pregnancy-Associated Mortality Review 2018 Update," May 2020, <http://www.floridahealth.gov/statistics-and-data/PAMR/documents/pamr-2018-update.pdf>.

⁷ Center for Disease Control, "Racial/Ethnic Disparities in Pregnancy-Related Deaths – United States, 2007-2016," available at <https://www.cdc.gov/reproductivehealth/maternal-mortality/disparities-pregnancy-related-deaths/infographic.html>.

While we support the state's efforts to extend postpartum coverage, we would note that the state could more comprehensively address the range of needs and gaps in coverage for women in Florida, including their need for care before and between pregnancies, by adopting the Affordable Care Act's Medicaid expansion for adults under 138 percent of the federal poverty line. Women of reproductive age have higher rates of uninsurance in states like Florida that have not expanded Medicaid – especially Black, Latina and indigenous women.⁸

Eliminating retroactive coverage does not promote the objectives of Medicaid and should not be waived.

We urge you to rescind the prior administration's approval eliminating retroactive coverage for most adults in Florida's Medicaid program as it does not promote the objectives of Medicaid and as such is not a proper use of section 1115 demonstration authority. Waiving retroactive eligibility exposes low-income people to medical debt, and this is more likely to affect people of color who have greater levels of medical debt.⁹

Under Florida's MMA demonstration, retroactive coverage for some individuals is limited to the first day of the month in which they submit an application. The demonstration eliminates retroactive coverage for all non-pregnant adults above age 21 including individuals receiving long term services and supports, very poor parents, and adults with disabilities. The state is currently required to submit an annual letter to CMS to continue the retroactive waiver, but now seeks to drop that requirement and continue the policy indefinitely. However, this request undercuts the central objective of the Medicaid program—to provide coverage—and should be rejected. Moreover, it is clear from the state's evaluation that the policy is harming Medicaid beneficiaries in Florida who are very poor and are disproportionately people of color.

The original rationale for Florida's waiver of retroactive eligibility was primarily to “enhance fiscal predictability.”¹⁰ Another hypothesis emphasized in CMS's 2018 approval was for the state to examine whether beneficiaries, spurred by the loss of retroactive eligibility, would enroll more quickly in Medicaid and access preventive care and non-institutional care.¹¹

The state's own evaluation underscores that there is no evidence that Florida's change in policy had any impact on changing beneficiaries' patterns of enrollment for the better or to promote the use of preventive care and sign up for Medicaid before they got sick. According to the state's evaluators:

⁸ Maggie Clark, et al. *Medicaid Expansion Narrows Coverage Gaps, but Racial Disparities Exist*,” Georgetown University Center for Children and Families, September 2021 available at <https://ccf.georgetown.edu/wp-content/uploads/2021/09/maternal-health-and-medex-final.pdf>

⁹ Leonardo Cuello, “Retroactive Coverage Waivers: Coverage Lost and Nothing Learned” Georgetown University Center for Children and Families, October 4, 2021. <https://ccf.georgetown.edu/2021/10/04/retroactive-coverage-waivers-coverage-lost-and-nothing-learned/>

¹⁰ April 27, 2018 amendment submitted by the state of Florida to its Managed Medical Assistance Demonstration, p. 6, accessed at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-mma-pa2.pdf>

¹¹ Approval letter from Seema Verma, CMS Administrator to Justin Senior, Secretary, Florida Agency for Health Care Administration, November 30, 2018 <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/Managed-Medical-Assistance-MMA/fl-mma-nov-2018-amend-appvl.pdf>

*“The proportions of successful Medicaid renewal before (84.3 percent) and after (85.6 percent) the policy change are very close. Thus, the policy change had minimal effect on the probability of successful enrollment renewal.”*¹²

This is not surprising given that it is highly unlikely that beneficiaries were even aware of the change in policy.

Retroactive coverage, which has been a feature of Medicaid since 1972, provides financial security to low-income beneficiaries, and helps prevent medical bankruptcy. Medicaid payments are normally available for these expenses if the beneficiary was eligible for Medicaid during this period. Data from Indiana shows how important retroactive coverage is for low-income parents in that state -- a group that wouldn't be expected to have large medical costs, but in fact incurred significant medical costs prior to enrollment. Medicaid paid \$1,561 on average on behalf of parents in Indiana who incurred medical costs prior to enrolling in Medicaid.¹³

Florida's official evaluation's executive summary (p. 3) reports an average increase in medical debt among beneficiaries of 5.9 percent -- an average of a \$12 increase for new enrollees -- after retroactive eligibility was eliminated¹⁴. More importantly, however, the evaluators note much later on (and far less prominently) in the report that *using an average dollar amount across hundreds of thousands of beneficiaries is not the best way to measure the policy's impact*. Looking at a smaller cohort that actually had incurred medical debt, the evaluators conclude:

*“Elimination of retroactive payments for medical care for the three months prior to new Medicaid enrollment is correlated with newly accrued medical debt, with average medical debt increasing by 5.9 percent after implementation of the new retroactive eligibility policy. While the difference was only \$12 on average when including all new enrollees, **when limiting the analysis to only those new enrollees who accrued some new medical debt, there was an average increase of \$85 in medical debt. This likely represents a significant financial burden to Medicaid recipients whose incomes are typically well below the poverty level.** This analysis also does not account for fees and penalties that accrue over time **if these debts are not paid off in a timely manner; thus, the actual financial burden is likely even larger**”* (p. 24).

It is clear now from the state's own evaluation that the policy, rather than promoting the objectives of Medicaid, is creating a “significant financial burden” for Medicaid beneficiaries whose incomes are typically well below the poverty line and are more likely to be people of color. This waiver of retroactive coverage must not continue any longer, and we urge you to rescind it.

¹² Department of Health Outcomes and Biomedical Informatics College of Medicine, University of Florida, Department of Behavioral Sciences and Social Medicine College of Medicine, Florida State University and Department of Health Services Administration University of Alabama-Birmingham *Evaluation of Florida's Managed Medical Assistance (MMA) Program Demonstration: Final Report The Impact of the Waiver of Retroactive Eligibility on Beneficiaries and Providers*, January 11, 2021.

¹³ July 29, 2016 letter from the Centers of Medicare and Medicaid Services to the state of Indiana, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/Healthy-Indiana-Plan-2/in-healthy-indiana-plan-support-20-lockouts-redetermination-07292016.pdf>.

¹⁴ Department of Health Outcomes and Biomedical Informatics College of Medicine, University of Florida, Department of Behavioral Sciences and Social Medicine College of Medicine, Florida State University and Department of Health Services Administration University of Alabama-Birmingham *Evaluation of Florida's Managed Medical Assistance (MMA) Program Demonstration: Final Report The Impact of the Waiver of Retroactive Eligibility on Beneficiaries and Providers*, January 11, 2021.

Ten-year section 1115 demonstration project extensions are not permitted under federal law.

Section 1115 of the Social Security Act allows the Secretary to approve state demonstration projects that promote the objectives of Medicaid. Section 1115 demonstrations can only be approved “for the period...necessary” for the state to carry out the project and are generally approved for no more than five years.¹⁵ Subsections (e) and (f) of section 1115 are clear that initial and subsequent extensions of an approved demonstration are limited to three to five-year periods.

Despite the clear direction from Congress that extensions be limited to periods no longer than three to five years, the Centers for Medicare & Medicaid Services (CMS) issued guidance in November 2017, stating that CMS “may approve the extension of routine, successful, non-complex section 1115(a) waiver and expenditure authorities in a state for a period up to 10 years.”¹⁶ Even absent a statutory prohibition on extensions longer than three to five years, Florida’s 10-year extension by the prior administration should not have been approved under CMS’ policy, because it is very far from being a “non-complex” demonstration. We urge you to reconsider this decision.

Significant questions exist regarding funding for the Low-Income Pool (LIP).

Many of us have commented in the past about the lack of accountability and transparency around funding provided through the LIP. Moreover, as you know, on February 25, 2021 the Departmental Appeals Board upheld a disallowance of \$97,570,183 as a consequence of past improper spending of federal funds through the LIP.¹⁷ This only heightens the need for renewed scrutiny of additional federal payments authorized by your predecessor for a period of nearly ten years shortly before leaving office.

This is especially true when a path to coverage for 790,000 uninsured Floridians¹⁸ is available through the Affordable Care Act -- which could reduce the amount of uncompensated care that providers must provide, but the state refuses to act on. In fact, the funding benefits for the state of expanding Medicaid are even greater as a consequence of the incentives included in the American Rescue Plan from which Florida could receive a net gain of \$1.8 billion according to researchers at the Kaiser Family Foundation.¹⁹ As we have written in prior comments on similar policies, we do not believe CMS should approve funding that undermines Medicaid expansion.²⁰

Moreover, as of this writing, Congress is actively considering a federal path to coverage for those that fall in the coverage gap.²¹ Should this be enacted, and even if it is not, we urge you to immediately reconsider the funding that Florida receives through the Low Income Pool especially

¹⁵ Social Security Act § 1115(a)(1).

¹⁶ Center for Medicaid and CHIP Services, “Section 1115 Demonstration Process Improvements,” November 6, 2017, <https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/cib110617.pdf>.

¹⁷ <https://www.hhs.gov/about/agencies/dab/decisions/board-decisions/2021/board-dab-3031/index.html>

¹⁸ Kaiser Family Foundation, “Who Could Medicaid Expansion Reach in Florida?” <https://files.kff.org/attachment/fact-sheet-medicaid-expansion-FL>.

¹⁹ Robin Rudowitz et al. “New Incentives for States to Adopt the ACA Medicaid Expansion: Implications for State Spending,” Kaiser Family Foundation March 17, 2021. <https://www.kff.org/medicaid/issue-brief/new-incentive-for-states-to-adopt-the-aca-medicaid-expansion-implications-for-state-spending/>.

²⁰ Letter from 13 national organizations on Texas Healthcare Transformation and Quality Improvement Program Extension Request, August 30, 2021, https://1115publiccomments.medicaid.gov/jfe/file/F_1CvyPTGxte9p5U.

²¹ Caitlin Owens “*Democrats Moral Medicaid Dilemma*” Axios, October 6, 2021. <https://www.axios.com/democrats-medicaid-medicare-dilemma-68bfff7e-48f9-41ff-8664-a923d7f5280b.html>

with regard to payment for uncompensated care for people whose care could be compensated through Medicaid expansion. This principle was well articulated by CMS in 2015 when Florida received an earlier extension of the LIP.²²

Finally, the state seeks in its request to eliminate retroactive eligibility for the length of the demonstration which will increase uncompensated care for providers and result in more beneficiaries incurring medical debt as discussed above. At the same time, and in the same demonstration, the state wishes to reimburse providers for uncompensated care and bad debt through the LIP. The federal government should not be in the business of reimbursing providers through the Low Income Pool for bad debt incurred as a consequence of a situation created by a waiver it has granted of retroactive eligibility. Such an approach further disadvantages beneficiaries as they remain at risk of direct financial harm as well as related consequences – such as negative impacts on their credit scores, etc.

Florida did not sufficiently respond to the public comments it received nor did it adjust its evaluation design to reflect the proposed changes.

The state did not respond to public comments received which identify harms that could affect beneficiaries as a consequence of the waiver of retroactive eligibility. Nor did the state explain why it is seeking a waiver to implement the 12 months postpartum coverage extension as opposed to a state plan amendment despite this question being raised by commenters. Finally, the state made no modification to its evaluation design based on any of the proposed changes it seeks.

Conclusion

Our comments include numerous citations to supporting research, including direct links to the research for HHS’ benefit in reviewing our comments. We direct HHS to each of the studies cited and made available to the agency through active hyperlinks, and we request that the full text of each of the studies cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

Thank you for your willingness to consider our comments. If you need additional information, please contact Joan Alker (jca25@georgetown.edu) or Judy Solomon (Solomon@cbpp.org).

Association of University Centers on Disabilities
Center for Law and Social Policy
Center on Budget and Policy Priorities
Community Catalyst
Epilepsy Foundation
Families USA
First Focus on Children
Florida Policy Institute
Florida Voices for Health
Georgetown University Center for Children and Families

²² Letter from Vikki Wachino, CMS Director to Justin Senior, Deputy Secretary Florida Agency for Health Care Administration, May 21, 2015, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/Managed-Medical-Assistance-MMA/fl-medicaid-reform-lip-ltr-05212015.pdf>.

Justice in Aging
March for Moms
March of Dimes
National Alliance on Mental Illness
National Association of Pediatric Nurse Practitioners
National Health Care for the Homeless Council
National Multiple Sclerosis Society
Primary Care Development Corporation
UnidosUS