

June 5, 2018

The Honorable Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar,

Thank you for the opportunity to comment on the proposed amendment to Florida's Managed Medical Assistance Section 1115 waiver. This letter addresses our concerns with the state's proposal to eliminate retroactive coverage for all non-pregnant adults.¹ We have numerous objections to the substance of the request and the manner in which this request has been made.

We urge you to reject this request primarily because it would create a significant barrier to affordable health care and decrease financial stability for Medicaid beneficiaries --especially for seniors and people with disabilities who need institutional long-term services and supports. Eliminating retroactive coverage would also harm hospitals and other safety net providers by increasing uncompensated care costs, jeopardizing their financial stability. Moreover, it's clear from the state's proposed hypotheses that the proposal would not promote the objectives of the Medicaid program.

Under the state's proposal, retroactive coverage would be limited to the first day of the month in which an individual submits an application. The proposal would affect persons receiving long term services and supports, very poor parents, and other adults with disabilities. It's not just adults that will be affected by the retroactive coverage waiver, but children as well. While they're exempt from the waiver, their development could be negatively affected by issues resulting from greater economic instability and poverty, such as toxic stress, as a result of parents being exposed to greater medical debt because of the retroactive coverage waiver.²

Eliminating retroactive coverage is bad policy that will harm Medicaid beneficiaries exposing them to substantial medical debt. Retroactive Medicaid coverage provides financial security to vulnerable beneficiaries and helps prevent medical bankruptcy. Data from Indiana show how important retroactive coverage is for low-income parents in the state, a group that might not 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 who incurred medical costs prior to enrolling in Medicaid.³

Waiving retroactive coverage is extremely problematic for seniors and people with disabilities who need long term services and supports. Eliminating retroactive coverage will make it harder for this vulnerable population to get the nursing home care when they need it, because they may delay

¹ The amendment also proposes changes to the Low Income Pool's terms and conditions which we are not commenting on.

² American Academy of Pediatrics Council On Community Pediatrics, "Poverty and Child Health in the United States," *Pediatrics*. 2016; 137(4): <http://pediatrics.aappublications.org/content/pediatrics/early/2016/03/07/peds.2016-0339.full.pdf>

³ July 29, 2016 letter from the Centers of Medicare and Medicaid Services to the state of Indiana, available at <https://www.medicare.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>.

applying due to a lack of familiarity with Medicaid and its eligibility rules. The process often requires help from family members to assemble information on assets and income needed for an eligibility determination. Also, it's often not clear when Medicaid eligibility begins given the need to spend down available assets.

Providers especially hospitals and nursing homes will also be exposed to more bad debt. The proposal will result in substantial cost-shifts to hospitals and nursing homes and may result in the diminished availability of long term services and supports. This is not speculative — nursing homes in Iowa are already making changes in their admission processes as a result of the retroactive coverage waiver the Centers for Medicare & Medicaid Services (CMS) approved there in 2017. The chief financial officer of an Iowa-based nursing home company wrote to CMS stating that “with the state requesting elimination of (retroactive payment), our nursing homes will no longer admit any prospective resident who is Medicaid-pending or will become Medicaid-pending shortly after admission.” Denying nursing home admission at the time it is needed prevents seniors and people with disabilities from getting the care they need, potentially leading to unnecessary and lengthy hospital stays.⁴

Retroactive coverage supports the financial stability of hospitals, nursing homes and other safety net providers as it allows them to be reimbursed for care they have provided during the three-month retroactive period that would otherwise be uncompensated, helping them meet their daily operating costs and maintain quality of care. Providers in Arizona have also expressed concern over the state's request to eliminate retroactive coverage citing its importance to ensuring the financial health of both Medicaid beneficiaries and safety net providers in the state. For example, the Arizona state chapter of the American Academy of Pediatrics expressed concern that “this proposed provision will put patients and families at risk for medical debt as well as increased uncompensated care costs for hospitals...this could put hospitals...at risk for cuts or closure potentially leaving entire communities with limited or no access to health care.”⁵

The state offers no hypothesis for this policy change other than its goal of “enhancing fiscal predictability.” This is not a permissible use of section 1115 authority.

On page 9 the application states, “The objective of this amendment is to enhance fiscal predictability by eliminating the three-month retroactive eligibility period for non-pregnant adults.” There is no other indication of any other objective. As such, the proposal is clearly a cost-cutting measure and serves no experimental purpose. In fact, federal courts have ruled that cost-savings are not a permissible use of section 1115 authority.⁶ The lack of any valid experimental design is underscored by the fact that the application makes no changes to the state's evaluation design to test the outcomes of this proposed change.

⁴ Clark Kauffman, “Medicaid Cuts to Roughly 40,000 Iowans Approved By the Feds,” *Des Moines Register*, October 31, 2017, <https://www.desmoinesregister.com/story/news/health/2017/10/31/iowa-medicaid-cuts-for-roughly-40000-iowans-approved-by-federal-government/816993001/>

⁵ Arizona Chapter of The American Academy of Pediatrics, Letter to Arizona Health Care Cost Containment System, February 12, 2018, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/az-hccc-pa7.pdf>.

⁶ United States Court of Appeals, Ninth Circuit, “Beno vs. Shalala,” July 1994, <https://openjurist.org/30/f3d/1057/beno-v-shalala>,

The state makes no attempt to address numerous objections to this policy change that were received during the state's public comment period. In the application starting at page 14, the state acknowledges many detailed [comments](#) that were received during the state comment period in opposition to this proposed change, but makes no effort in the application to respond to or ameliorate these concerns. In fact, there appears to be no public comments at all that support the elimination of retroactive coverage. The state is proceeding nonetheless.

Implementation of this change would be rushed and inadequate. The proposal, if approved, would become effective July 1, 2018, according to the state's plan. Given that the federal comment period closes on June 5th there will be little to no time for the state to educate providers and beneficiaries about this change which will expose them to substantial financial risk. Moreover, the state appears to have no such plan to do this kind of educational outreach.

For all of these reasons we urge you to reject Florida's request to eliminate retroactive coverage. Thank you for your consideration of our comments. We ask that you include the full text of each of the studies and other materials cited through active hyperlinks in our comments in the formal administrative record for purposes of the Administrative Procedures Act. If you have additional questions or need more information please contact Joan Alker (jca25@georgetown.edu) or Judith Solomon (Solomon@cbpp.org).

Center for Autism and Related Disorders
Center for Law and Social Policy
Center on Budget and Policy Priorities
Children's Defense Fund
Community Catalyst
Epilepsy Foundation
Family Voices
Florida Chapter of American Academy of Pediatrics, Inc.
Georgetown University Center for Children and Families
HIV Medicine Association
LeadingAge
National Alliance on Mental Illness
National Center for Law and Economic Justice
National Health Care for the Homeless Council
National Multiple Sclerosis Society
National Partnership for Women & Families
Raising Women's Voices for the Health Care We Need
Service Employees International Union (SEIU)