

September 11, 2020

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

Re: Florida Managed Medical Assistance (MMA) Program Extension Request

Dear Secretary Azar,

The undersigned organizations appreciate the opportunity to comment on Florida's request to extend the Managed Medical Assistance (MMA) Program section 1115 demonstration from the current expiration date of June 30, 2022 to June 30, 2024. As part of this request, the state seeks to continue denying retroactive coverage to Medicaid beneficiaries who incur medical costs up to three months before enrolling in Medicaid if they were eligible during that three-month period.

We urge you to reject the state's request for a two-year extension of its MMA Demonstration. The request does not comply with the requirement of 42 CFR 431.412(c)(vi) that extension requests include an evaluation report. The state presents information on the results of only some demonstration elements, and only for the first two demonstration years (SFY 2016-2017 and SFY 2017-2018). The state presents no information on the impact of eliminating retroactive coverage, nor does it include important quality of care data for managed care plans. Without a comprehensive evaluation report that covers at least three years of all elements of the demonstration, the Secretary cannot make an informed determination as to whether to extend all, some, or none of the elements.

Moreover, the Secretary does not have the authority under section 1115 of the Social Security Act (the Act) to waive retroactive coverage, because waiving retroactive coverage does not promote the objectives of the Medicaid program, a statutory requirement for approval.

Eliminating Retroactive Coverage Does Not Promote the Objectives of Medicaid and Should Not Be Approved, Much Less Extended

Under Florida's current MMA demonstration, retroactive coverage is limited to the first day of the month in which an individual submits an application, with certain exceptions. The demonstration eliminates retroactive coverage for all non-pregnant adults above age 21 including individuals receiving long term services and supports (LTSS), very poor parents, and adults with disabilities. Eliminating retroactive coverage undercuts the central objective of the Medicaid program—to provide coverage—and should be withdrawn. It should certainly not be extended beyond its current expiration date without an evaluation report, as required by CMS regulations.

Waiving Retroactive Coverage Increases Financial Harm for Beneficiaries and Providers

Retroactive coverage prevents gaps in coverage and increases financial security for both beneficiaries and health care providers by retroactively covering individuals for up to 90 days, assuming the individual is eligible for Medicaid during that time. There is already evidence from section 1115 demonstrations confirming the financial protection retroactive coverage provides for beneficiaries. Data from Indiana show the importance of 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.¹

The state contends that eliminating 3-month retroactive coverage “promotes personal responsibility” by encouraging individuals to apply for Medicaid as soon as they are eligible and that it increases financial predictability and sustainability for the state. There is no evidence that eliminating retroactive active coverage accomplishes either of these objectives. Oftentimes, individuals are not aware of their Medicaid eligibility until they encounter the health care system or experience a medical event. Retroactive eligibility ensures that these and other individuals, who may be experiencing a series of health events prior to learning they may be eligible for Medicaid, do not become burdened by medical debt.

This is especially true for seniors and people with disabilities as eliminating retroactive coverage will make it harder for this vulnerable population to get nursing home care when they need it, because they may delay applying due to a lack of familiarity with Medicaid and its eligibility rules. Eligibility rules for people needing nursing home care are complex, often requiring help from family members to assemble information on assets and income needed for an eligibility determination. Moreover, it’s often not clear when Medicaid eligibility begins given the need to spend down available assets.

Retroactive coverage also supports the financial stability of hospitals, nursing homes, and other safety net providers. 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 expressed concern over that state’s request to eliminate retroactive coverage, citing its importance in 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.”²

The risk of financial harm to beneficiaries and providers is even greater during the COVID-19 pandemic, when individuals could be faced with owing thousands of dollars for the cost of treatment and providers could be faced with increased uncompensated care costs.³ Without retroactive coverage, the state puts beneficiaries at risk for costly periods of uninsurance and providers at risk of increased uncompensated care. The Secretary’s waiver of retroactive coverage should be denied.

¹ 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>.

² 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>.

³ Paul Shafer, Nicole Huberfeld, and Ezra Golberstein, “Medicaid Retroactive Eligibility Waivers Will Leave Thousands Responsible For Coronavirus Treatment Costs,” Health Affairs Blog, May 8, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200506.111318/full/>.

The State's Proposal Does Not Include an Evaluation of the Impact of Eliminating Retroactive Coverage

Florida's extension request does not contain an evaluation of its retroactive coverage waiver. Under 42 CFR 431.412(c)(vi), states must include an evaluation report with any request to extend a section 1115 demonstration. Because the state has not submitted an evaluation report on the impact of waiving retroactive coverage, the Secretary cannot extend this waiver.

The state implemented its retroactive coverage waiver in February 2019. By the state's own admission, it will have data on the first year of retroactive coverage by September 2020 and will have two years of data based on the current evaluation design, which was only just approved several months ago in April, by the expiration of the current demonstration. If, after reviewing two years of data on the operation of the waiver, Florida wishes to request an extension, it may do so. Yet, Florida is submitting its extension request two years prior to the demonstration's expiration without any evaluation and no data on the impact of eliminating retroactive coverage on beneficiaries or providers.

The State's Evaluation Design Recognizes that Evaluating Its Retroactive Coverage Waiver is Methodologically Fraught

The state's extension request includes a 94-page Evaluation Design Update for 2017-2022. In the "Methodological Limitations" section on page 71 is the following caveat: "A major limitation in evaluating retroactive enrollment (Component 9) is the inability to identify enrollees after the policy change [i.e., the termination of 3-month retroactive coverage statewide at a single point in time (February 2019)] who would have been eligible for retroactive enrollment under the rules in effect prior to the policy change. The Agency estimates that only a small percentage of new Medicaid enrollees qualified for retroactive enrollment prior to the policy change. Consequently, any effect of the policy change on current new enrollees who would have qualified for retroactive enrollment under the previous policy will be difficult to capture among the large number of current new enrollees who would have been ineligible for retroactive enrollment under the previous policy."

The Design Update proposes to address this limitation by, among other things, using children and pregnant women as the control group. (Pregnant women and children are not subject to the state's waiver of retroactive coverage). This, however, raises its own methodological problems: "Unfortunately, the assumption of constant slopes for men and non-pregnant women vs. pregnant women and children is especially tenuous given the obvious differences between these groups. This too argues for exploring techniques for testing and relaxing the constant trends assumptions in standard D-i-D." (p. 90). The state's need to manipulate the standard Difference-in-Differences research design raises fundamental questions about whether any reliable conclusions can be drawn from the current demonstration, much less a two-year extension.

The State's Request is Premature Because State Law Does Not Allow for Elimination of Retroactive Coverage During the 2-Year Extension Period

The Governor is requesting an extension of the waiver of retroactive coverage from the current expiration date of June 30, 2022 to June 30, 2024. However, the state legislature has authorized the

elimination of retroactive coverage only through July 1, 2021.⁴ The Governor's request does not disclose that the 2-year extension is being sought even though the state does not have the authority to terminate retroactive coverage during the extension period.

The Secretary should not approve a waiver that the state does not have the authority to implement.

Florida's Application Fails to Provide Important Data on the State's Quality Measures and Managed Care Plans

The state is seeking to continue its demonstration without providing data on the impact of the current demonstration on beneficiaries. In addition to the lack of data on the impact of waiving retroactive coverage, it does not provide complete data on the state's quality measures and managed care plans. Without all relevant data, CMS cannot make a determination on whether to extend the state's demonstration.

Florida's Proposal Omits Relevant Managed Care Data and Quality Measures

The state includes some managed care and quality measurement data in its application but does not include key information that is necessary for a comprehensive view of the demonstration. The proposal provides data on managed care plans awarded contracts, network adequacy, and enrollment. However, important data are missing from the state's application including compliance with the medical loss ratio and plan encounter data. Compliance with the medical-loss ratio of 85 percent has been required as part of Florida's demonstration even before the implementation of the Affordable Care Act, yet the state provides no indication of whether MMA health plans are meeting the requirement. The state also largely fails to include any encounter data, which would detail the services beneficiaries receive from a provider. The absence of these data does not allow for a determination of whether MMA health plans, and thus the demonstration, are meeting demonstration and ACA requirements as well as beneficiary needs.

The state's extension request details a number of quality measures reported by the managed care plans and aggregated into a weighted statewide average. However, there are gaps in the data. Specifically, the state does not include all of the Child Core Set (CCS) of health care quality measures in its request, but rather only those that align with National Committee for Quality Assurance (NCQA) HEDIS measures. Reporting only the more limited child-focused HEDIS measures in the waiver request suggests that the state performs better overall on children's health care quality than the CCS reporting reflects (based on an analysis of the two data sets). For example, in 2017, Florida reported that less than half (14 of 30) of the CCS measures were above the median reported across states. However, the HEDIS data for the same year indicates that two-thirds (10 of 15) of the measures were above the national average. Moreover, the state's comparison of its performance to the national HEDIS averages merely identifies whether the state is average, above average, or below average on a particular aspect of health care quality. The lack of specific measurement rates makes it difficult not only to adequately assess how Florida's health care quality in Medicaid compares to other states but also to address the areas of health care quality in the greatest need of improvement.

⁴ H.B. 5003, Implementing the 2020-2021 General Appropriations Act, Florida Legislature (2020) <http://laws.flrules.org/2020/114>.

The state also does not provide performance measurement data stratified by race and ethnicity. In Florida, almost two-thirds of Medicaid beneficiaries are people of color.⁵ Research has shown people of color experience longstanding health and health care disparities including barriers to accessing care, heart disease, diabetes, and higher uninsurance rates compared to Whites.⁶ Disaggregating performance measures by race and ethnicity is necessary to determine whether the demonstration is effectively providing care for beneficiaries of color and whether it is helping reduce racial health disparities.

Conclusion

We urge you to reject the state's request for a two-year extension of its MMA demonstration. The state's request to continue eliminating retroactive coverage does not promote the objectives of the Medicaid program, a statutory requirement for approval. In addition, the state didn't comply with federal regulations governing section 1115 demonstration extension requests as it did not include an evaluation of several key elements of the demonstration. Without an evaluation, neither the state nor the Secretary can know whether the demonstration has been successful in promoting the objectives of Medicaid, and the Secretary cannot make an informed determination as to whether Florida's request to extend its demonstration should be granted. The evaluation report required by federal regulation is particularly important as to the waiver of retroactive coverage, which by definition undermines coverage, which the D.C. Circuit Court of Appeals has ruled is the central objective of the Medicaid program.⁷

Our comments include 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 Judy Solomon (Solomon@cbpp.org) or Joan Alker (jca25@georgetown.edu).

Arthritis Foundation
Autistic Self Advocacy Network
Center for Law and Social Policy
Center on Budget and Policy Priorities
Cystic Fibrosis Foundation
Epilepsy Foundation

⁵ Kaiser Family Foundation, "Distribution of the Nonelderly with Medicaid by Race/Ethnicity,"

<https://www.kff.org/medicaid/state-indicator/distribution-by-raceethnicity-4/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

⁶ Samantha Artiga and Kendal Orgera, "Key Facts on Health and Health Care by Race and Ethnicity," Kaiser Family Foundation, November 12, 2019, <https://www.kff.org/disparities-policy/report/key-facts-on-health-and-health-care-by-race-and-ethnicity/>; Samantha Artiga, Kendal Orgera, and Olivia Pham, "Disparities in Health and Health Care: Five Key Questions and Answers," Kaiser Family Foundation, March 4, 2020, <https://www.kff.org/disparities-policy/issue-brief/disparities-in-health-and-health-care-five-key-questions-and-answers/>.

⁷ *Gresham v. Azar*, United States Circuit Court for the District of Columbia, Civil Action No. No. 19-5094, February 14, 2020.

First Focus on Children
Georgetown University Center for Children and Families
Medicare Rights Center
National Academy of Elder Law Attorneys
National Alliance on Mental Illness
National Center for Law and Economic Justice
National Employment Law Project
National Health Care for the Homeless Council
National MS Society
Raising Women's Voices for the Health Care We Need