



September 11, 2020

VIA ELECTRONIC SUBMISSION (Alex.Azar@HHS.gov)

The Honorable Alex Azar, Secretary
U.S. Department of Health and Human
Services Hubert H. Humphrey Building
200 Independence Ave.,
S.W. Washington, D.C.
20201

Re: Florida's Request for 2 Year Extension of the State's 1115 Managed Medical Assistance Waiver

Dear Secretary Azar:

Please accept the comments below from the Florida Health Justice Project (FHJP) and the Center for Medicare Advocacy.

The Center for Medicare Advocacy ("Center") founded in 1986, is a national, non-partisan education and advocacy organization that works to ensure fair access to Medicare and to quality healthcare. At the Center, we educate older people and people with disabilities to help secure fair access to necessary health care services. We draw upon our direct experience with thousands of individuals to educate policy makers about how their decisions affect the lives of real people. Additionally, we provide legal representation to ensure that people receive the health care benefits to which they are legally entitled, and to the quality health care they need.

The Florida Health Justice Project (FHJP) is a Florida based 501c(3). Our mission is to help ensure increased access to health care and improve health equity for Florida's most vulnerable populations. We appreciate the opportunity to provide these comments.

Our comments will focus on the following subjects specifically addressed in the State's Waiver extension request: the repeal of Retroactive Medicaid Eligibility (RME) and the continuation of the Low Income Pool (LIP).

Further, as Florida is seeking to extend its existing MMA 1115 waiver two years prior to its expiration and because the state is experiencing unprecedented health and economic crises caused by COVID-19, we also offer comments regarding our hope that the MMA demonstration program be used to increase transparency and accountability in addressing

health disparities exacerbated by COVID-19. This includes the need for increased network adequacy, particularly for those services most directly related to alleviating racial disparities and the risk of institutionalization, e.g. midwifery services and home health services. We also urge increased collection and publication of data and measures based on race and ethnicity.

Repeal of Retroactive Medicaid Eligibility (RME)

We strongly oppose the waiver of retroactive eligibility of Medicaid coverage for non-pregnant adults. Under federal Medicaid law, costs incurred during the three months prior to the month of application can be reimbursed if: 1) they are covered under the Florida Medicaid plan; and 2) the beneficiary would have been eligible for Medicaid at the time the expenses are incurred. The Legislative history related to this provision is highly relevant. Specifically, the three month retroactive period is meant to “protect[] persons who are eligible for Medicaid but do not apply for assistance until they have received care, either because they did not know about Medicaid eligibility requirements or because the sudden nature of their illness prevented their applying.” HR. Rep. 92-231 (1972) reprinted in 1972 U.S.C.C.A.N. 4089, 5099.

In other words, Congress responded to the simple fact that no one can predict sudden illness or accident. After someone is in a hospital or nursing facility, she or he may not be healthy enough to file a Medicaid application or may not understand that a Medicaid application should be filed.

Elimination of RME puts an unfair burden on elderly, ill, and disabled individuals and their families. Those who experience a catastrophic injury rendering them unable to apply quickly for Medicaid will be responsible for medical bills incurred during a period in which their bills are likely the highest. As a result, vulnerable low income Floridians are incurring crushing financial stress and debt.

["George's" story](#) is a perfect example of how this policy change is hurting low income Floridians and safety net providers. In late January 2020, George suffered a heart attack and was rushed to the hospital. The paperwork for his Medicaid coverage was filed in February. Because his application was not submitted during the month of his hospitalization, he received a bill for \$62,000. This is creating significant stress for George and his family that would have been preventable before the elimination of retroactive coverage. And, given his minimal income (only \$1100/month), he will never be able to pay the hospital bill, and a critical safety net provider will be further stressed.

Under Section 1115 of the Social Security Act, states can submit a “waiver request” to the Secretary of HHS to waive some requirements of the Medicaid Act in order to test novel approaches “likely to assist in promoting the objectives” [improving medical assistance for low income people]. This proposal fails to meet that standard. It not only fails to identify a specific proposition to be tested, it utterly undermines the objectives of the Medicaid Act by denying health care coverage to people who desperately need it. Waivers should be used to improve coverage, not to leave Medicaid eligible persons without coverage when they have health care needs, especially when those needs are unpredictable.

Additionally, this policy is utterly irrational in a non-expansion state like Florida. Most uninsured, low-income Floridians do not qualify for Medicaid *until* they are seriously ill or disabled. The state’s justification for eliminating RME, i.e. “encouraging individuals to engage in the health system by applying for Florida Medicaid as soon as they become eligible. . .” ignores the reality of those who have suffered a sudden unexpected illness or accident and are unable to apply as soon as they are eligible. Florida’s statement in the Extension Request’s Public Notice Document that the elimination of RME “promote[s] personal responsibility . . .” is specious. See [Public Notice Document at 22](#).

Finally, the Florida Legislature chose not to make repeal of RME permanent during the 2020 session. Instead, AHCA was also directed to submit a report on the impact of this cut on beneficiaries and providers on or before March 1, 2021. Without this information, the Legislature clearly did not want to take action to make this cut permanent. Accordingly, AHCA’s waiver request to extend this cut through June 30, 2024, lacks legislative authority.

Low Income Pool (LIP)

As consumer advocates, we want to underscore our appreciation for the Low Income Pool’s (LIP’s) role in assisting safety net providers for uninsured low income Floridians. However, for the record: it is important to repeatedly note that Florida’s LIP program, both throughout its history and currently, fails to address issues related to our State’s large number of uninsured in a rational way.

Florida’s LIP program provides supplemental funding to help reimburse providers for their costs in providing services to uninsured individuals. And while we applaud that the Florida LIP program now includes local health centers providing primary care (FQHCs), the vast majority of LIP dollars go to hospitals to reimburse for uninsured patients and emergency department costs. Refer to https://b.ahca.myflorida.com/Medicaid/Finance/finance/LIP-DSH/LIP/docs/SFY20-21_LIP_Model.pdf

There are now over 1.5 million Floridians who would be eligible for Medicaid if Florida expanded Medicaid under the Affordable Care Act.¹ It is the position of FHJP and the Center, along with other consumer advocates and health policy experts that a superior plan for supporting providers, lowering costs and improving health care would be providing actual coverage through Medicaid expansion. If Florida expanded Medicaid, the number of uninsured individuals would decrease, and all types of providers, including primary and preventive care providers would receive reimbursement for providing care to low income uninsured adults.

In addition, Medicaid expansion would be less administratively wasteful and subject to abuse. Multiple reviews over more than a decade have flagged problems with Florida’s LIP program. In 2008 the Secretary of DHHS was informed that the supplemental funding scheme was “problematic.” U.S. Government Accountability Office, Medicaid Demonstration Waivers: Recent HHS Approvals Continue to Raise Cost and Oversight Concerns 28 (Jan. 2008) (GAO-08-87) (finding federal spending under the Florida LIP “problematic” and that DHHS had not ensured the “fiscal integrity” of the Medicaid program); see also GAO, Medicaid Demonstration Waivers: Approval Process Raises Cost Concerns and Lacks Transparency 14-

17 (June 2013) (GAO-13-384) (raising similar concerns with similar pooling arrangements in Texas); Navigant Healthcare, Study of Hospital Funding and Payment Methodologies for Florida Medicaid, Prepared for: Florida Agency for Health Care Administration, at 24-25, 142, 181 (Feb. 27, 2015) (noting the lack of monitoring).² And in 2019 the HHS Office of Inspector General found that Florida paid hundreds of millions of dollars to a Miami safety net hospital “[that were not in accordance with the waiver and applicable federal regulations.](#)” As a result, OIG recommended that Florida refund \$412 Million to the federal government.³

Finally, while Florida is eligible for a total LIP allotment of \$1.5 billion, the state relies entirely on local counties for the state match and has been unable to raise the required matching funds from local entities. Thus, the actual funds available are far less than \$1.5 billion available under the current Waiver’s annual allotment for LIP. For example, in DY 13, only \$857.6 million was paid through the LIP program to qualified providers.⁴ The SFY 2020-21 LIP Model Summary has a total LIP program of just over \$ 1.1 billion (\$ 1,079,712,913). This includes a local county match of \$ 343,780,592. Given the terrible impact of the pandemic on local economies, it is likely that the capacity of Florida’s counties to raise the state match for this essential program will be even more diminished than in DY 13.

Network Adequacy Issues

As consumer advocates, we are taking this opportunity to flag concerns over network adequacy that have been brought to our attention, particularly for those services directly related to alleviating racial disparities and the risk of institutionalization. These include a lack of network adequacy with regard to midwife services and home health services for individuals enrolled in the long-term care waiver.

Midwifery services

Expansion of access to high quality and culturally sensitive midwifery care is a key tool in addressing the national maternal health crisis and its disproportionate impact on Black people. Midwives are an invaluable resource, providing community-based care with a focus on wellness both before and after birth.⁵ The midwife’s expansive approach to prenatal and perinatal care has already proven effective in many states’ efforts to address poor maternal health outcomes.⁶ Researchers have found that states in which midwives are both widely accessible and deeply integrated into communities tend to see better perinatal and postpartum outcomes.⁷ Thus, expanding access to midwives for people covered by Medicaid in Florida has the potential to significantly improve maternal health outcomes and address the unacceptable disparities in outcomes.

Yet access to midwives for people covered by Medicaid managed care in Florida is distressingly elusive. We at Florida Health Justice Project undertook a [secret shopper survey](#) to assess access to midwives across Medicaid managed care plans covering the Miami-Dade region. We found that for all but one of the MCOs, 50% or fewer of the listed midwives were accepting new member patients.

The findings suggest that all of the MCOs serving Miami-Dade are, to various degrees, violating provisions of the AHCA contract, including that: (1) the MCO must maintain an accurate and complete online provider directory (*see* July 1, 2020 AHCA Model Contract, Attachment 2, p.53); and (2) the MCO must maintain a region-wide network of providers in sufficient numbers to meet the network capacity and geographic access standards for services (*see* Model Contract, Attachment 2, p.83).

We hope and urge that any extension of the MMA Waiver comes with a close review of MCO adherence to network adequacy standards across the spectrum of providers and specialists, including midwives.

Home health services

Maintaining network adequacy for home health care is vital in ensuring that Florida's most vulnerable Medicaid managed care enrollees can avoid institutionalization. This is critical at any time, and especially now given the increased risk of COVID infection and death among Florida's nursing home residents. However, enrollees in the Long-Term Care Waiver have long reported problems with home health aides showing up as scheduled and consistently receiving home health services at the prescribed level. The problem of those experiencing a "gap" in coverage is exemplified in Alene's story. <https://www.floridahealthstories.org/alene>.

The COVID-19 crisis has also brought increased attention to the underlying problems causing workforce issues among home health care providers, specifically the extremely low pay available to support this essential workforce. *See*, e.g. comments provided to FHJP and partners in questionnaires related to Appendix K, and the opportunity afforded states to request increased pay for frontline health workers during the health crisis. https://www.floridahealthjustice.org/uploads/1/1/5/5/115598329/appendixksummaryofquestionnaireresponses_9-1.pdf. To date, Florida has not yet joined 32 other states in requesting an increase for frontline worker pay under Appendix K.

Data Collection

We urge increased collection and publication of data and measures based on race and ethnicity. Nearly every health outcome in Florida is marked by racial disparities. Urgent work is needed to address these disparities. At the same time, extensive collection of data is critical to establishing a baseline for current outcomes, and for tracking progress moving forward. The Florida Department of Health (DOH) collects and publishes some of this information, but currently the picture of healthcare outcomes in Florida, particularly from a disparities perspective, is incomplete. In fact, we have noted, as we [track COVID data](#) from the DOH, the limitations of the available data. The 1115 MMA demonstration plays a critical role in deepening the collective understanding of health outcomes and disparities in Florida, both in the context of the pandemic and more broadly.

AHCA should work with disparities experts around the state to establish a core set of metrics to be collected and published on a regular basis. As providers of public health

care, Medicaid managed care organizations have an obligation to play an active role in the reduction of disparities, and to share their outcomes with the public. AHCA should hold these entities accountable.

Thank you for consideration of our comments.

For additional information, please contact Miriam Harmatz, Executive Director, Florida Health Justice Project harmatz@floridahealthjustice.org, 786-853-9385 or Kata Kertesz, Policy Attorney, Center for Medicare Advocacy, kkertesz@MedicareAdvocacy.org, 202-293-5760.

Sincerely,
s/Miriam Harmatz

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¹ <https://www.kff.org/uninsured/issue-brief/how-many-uninsured-adults-could-be-reached-if-all-states-expanded-medicaid/>

² Navigant Report, available at http://ahca.myflorida.com/medicaid/Finance/finance/LIP-DSH/LIP/docs/FL_Medicaid_Funding_and_Payment_Study_2015-02-27.pdf.

³ Office of Inspector General, available at <https://oig.hhs.gov/oas/reports/region4/41704058.pdf>

⁴ https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/mma/1115_MMA_Waiver_Extension_Request_Public_Notice_Document_FINAL_2020-24.pdf

⁵ Sehhatie, Fahimeh, Maryam Najjarzadeh, Vahid Zamanzadeh, and Alehe Seyyedrasooli. "The Effect of Midwifery Continuing Care on Childbirth Outcomes." U.S. National Library of Medicine. Medknow Publications & Media Pvt Ltd, May 2014. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4061621/>

⁶ Ibid.

⁷ "Midwifery Integration State Scoring (MISS) System Report Card: Washington." Birth Place Lab, <https://www.birthplacelab.org/wp-content/uploads/2018/02/Washington.pdf>.