



FLORIDA POLICY INSTITUTE

May 29, 2018

VIA U.S. MAIL

The Honorable Alex Azar, Secretary
U.S. Department of Health and Human Services (HHS)
200 Independence Ave., S.W.
Washington, D.C. 20201

Re: Florida's Request to Amend 1115 Managed Medical Assistance (MMA) Waiver (Project Number 11-W-00206/4)

Dear Secretary Azar,

I submit this comment letter on behalf of the Florida Policy Institute (FPI), an independent, nonpartisan and nonprofit organization dedicated to promoting widespread prosperity and advancing fiscal policies that expand economic opportunity for all Floridians. FPI's expertise incorporates my 30-plus years of "on the ground" experience representing low income Floridians seeking access to health care.

These comments are solely directed to the portion of the above referenced §1115 Amendment Request pertaining to elimination of retroactive Medicaid eligibility (RME). In response to the state's earlier 30-day public comment period, FPI filed extensive comments with the Agency for Health Care Administration (AHCA). AHCA's final application filed with the Centers for Medicare & Medicaid Services (CMS) included a summary of public comments received, yet it provided no response to these comments and made no modifications to the draft RME request.

Thus, we are attaching and incorporating by reference into this letter, and the record for review, our earlier comments to AHCA. Likewise, please consider all linked documents in this letter to be part of the record for review. All concerns raised in our AHCA letter continue to apply to the state's now pending request with the U.S. Department of Health and Human Services (HHS). There are, however, some additional justifications for this request provided in AHCA's cover letter to HHS, which we respond to below.

Florida's misleading justifications for this cut

The only reason asserted in the waiver application for this proposal is "to enhance fiscal predictability" (Amendment Request, p. 6). As previously highlighted in our state comments,

this reason utterly fails to meet §1115 requirements of being innovative or experimental. Rather, this is a code phrase for taking away coverage and saving the state money. AHCA's cover letter, however, attempts to supplement its justification by re-hashing the aspirational goals of its overall Medicaid managed care 1115 waiver (e.g., increasing access to high quality, coordinated care provided in the most appropriate, least restrictive setting; reducing unnecessary hospital admissions; and utilizing home- and community-based services over institutionalization).

These justifications are a complete mismatch as support for this proposal and belie the reality of Florida's current health landscape, which is characterized by: substantial gaps in the state Medicaid program; a lack of access to health insurance for the state's poorest residents; and the desperate circumstances these families face when medical crises arise.

Florida has not expanded its Medicaid program, so its current income and categorical eligibility criteria are extremely stringent. The only healthy adults (other than pregnant women) who can qualify for Medicaid are parents with household incomes at or below [34 percent of the federal poverty level \(29 percent plus 5 percent income disregard\)](#), which is just \$6,944 per year for a family of three. Other healthy parents below the poverty level and healthy childless adults with no income or income below 100 percent of poverty are ineligible. This leaves [nearly 400,000 Floridians in a coverage gap](#). Notably, [most are employed or are members of working families](#) and their employers do not offer them health insurance.

The reality is that most healthy, low-income Floridians are not eligible for Medicaid until they are seriously ill or disabled.

In other states, CMS has justified waiving RME by asserting that this will both encourage beneficiaries to obtain and maintain health coverage, even when healthy, and increase continuity of care by reducing gaps in coverage when beneficiaries churn on and off Medicaid or sign up for Medicaid only when sick. See, [Kentucky, Iowa and Arkansas §1115 waiver approvals](#).

While we question the soundness of this policy even in expansion states, it clearly makes no sense in a non-expansion state like Florida. In fact, it is Florida's current Medicaid program structure that prevents most low-income adults from accessing coverage when they are healthy, or even when they suffer from serious chronic conditions (such as diabetes or asthma). [Multiple studies](#) demonstrate that uninsured people have less access to preventive and chronic care, thus leading to more emergency room visits, hospitalizations and other restrictive settings for treatment. It's a cruel irony that Florida's justifications for cutting RME are the best arguments for why Florida needs to expand its Medicaid program. ("Not having Medicaid eligibility means they are missing out on preventive care and chronic care management through a broad network of providers.")

RME provides otherwise uninsured people coverage at a moment of a medical crisis, allowing families sufficient time to sort out the arcane Medicaid eligibility structure and navigate the complex application process. Delays in getting an application through can often be attributed to the fact that at that moment in time, the applicant is too ill to help with the process.¹ Even if hospitals and nursing homes more quickly file applications, they will likely be incomplete and lacking documentation essential to a final determination of eligibility.

Contrary to the state's assertion, this cut directly harms recipients — mostly seniors, persons with disabilities — and people facing unexpected catastrophic illnesses.

The state disingenuously attempts to minimize the impact of this proposal on seniors, persons with disabilities and Floridians facing catastrophic medical events by asserting that this is not a "cut." But this characterization is completely disproven by the state's own budget analysis.² It shows that the state will save about \$98 million by cutting RME primarily for the lowest income people with disabilities — SSI recipients — who need inpatient hospital services; Medicare beneficiaries, mainly seniors, needing nursing home care; and medically needy people, typically Floridians facing a medical catastrophe and needing inpatient hospitalizations.

RME is critical for each of these groups:

- **SSI recipients (people with disabilities):** RME saves SSI recipients from crushing debt due to large medical expenses they often incur prior to applying for disability benefits, when their health is seriously deteriorating. This can lead to emergency situations requiring hospitalization. Often, it's the hospital which offers to help file a Medicaid/SSI application that triggers the individual's realization that they may be Medicaid eligible. Once they are determined eligible for SSI, Medicaid picks up the medical bills they ran up while their health disintegrated during the three months retroactive to their SSI application.
- **Medicare beneficiaries:** They must look to Medicaid for coverage of long-term nursing home care since Medicare only covers 120 days. As Dr. Polivka highlights in the attached [commentary](#), RME now guarantees that nursing homes will get reimbursed during the gap when Medicare coverage ends and Medicaid coverage begins. Eliminating RME will make it substantially more difficult for both moderate- and low- income people who are not Medicaid eligible at the outset to find a nursing home placement. That's because

¹ Also, people who try to apply for Medicaid based on a disability through the state Department of Children and Families are frequently advised that they must apply for Social Security disability benefits first. See [65A-1.702, Florida Administrative Code, Requirement to File for Other Benefits](#). This leads to more delay for uninsured people in poor health trying to quickly access Medicaid coverage.

² Attached is the state's analysis provided to the Florida Policy Institute through its May 7, 2018 public records request. Also attached is an analysis of the state's data prepared by the Safety Net Hospital Alliance of Florida.

nursing homes will be taking a bigger gamble that bills will not get paid for care provided prior to the month of a Medicaid application.³

- **Medically Needy:** These are uninsured adults who face a catastrophic medical crisis, like an accident or life-threatening disease. Consider these common circumstances: A healthy, low-income, working uninsured adult suddenly becomes desperately ill and hospitalized. They have been shut out of qualifying for subsidies to purchase private insurance on the federal marketplace because their income is below poverty and Florida Medicaid does not provide them coverage. All their earnings are exhausted covering rent, food and other necessities for their family. When healthy, there was no way they could afford to prepare for this crisis by purchasing insurance. Taking away RME coverage, precisely at the moment they are facing this medical crisis, will inevitably drive them deeper into poverty due to large hospital bills.

And under the worst circumstances, it could lead to irreversible health consequences caused by delays in initiating treatment. While hospitals are required to serve uninsured people for "emergency" conditions, once those conditions are stabilized neither hospitals nor other medical providers have any legal obligation to provide follow up care or care prior to the emergency.

Study after study shows that delays in care lead to worse outcomes.⁴ When patients present with known or unknown but potentially serious problems, delays to get a Medicaid application filed lead to worse outcomes, including death.

³ It's also worth noting that despite the state's promotion of the availability of rapid access to home- and community-based services instead of nursing home care through the state's long-term managed care program, the reality is that applicants face enormous waiting lists for these services. ([49,807 as of April 26, 2018](#)).

⁴ Gold, H. T., Do, H. T., & Dick, A. W. (2008). Correlates and effect of suboptimal radiotherapy in women with ductal carcinoma in situ or early invasive breast cancer. *Cancer*, *113*(11), 3108-3115. doi:10.1002/cncr.23923; Prentice, J. C., & Pizer, S. D. (2007). Delayed Access to Health Care and Mortality. *Health Services Research*, *42*(2), 644-662. doi:10.1111/j.1475-6773.2006.00626.x; Pincus, D., Ravi, B., Wasserstein, D., Huang, A., Paterson, J. M., Nathens, A. B., Kreder, H. J., Jenkinson, R. J., & Wodchis, W. P. (2017) Association Between Wait Time and 30-Day Mortality in Adults Undergoing Hip Fracture Surgery. *JAMA*, *318*(20), 1994-2003. doi: 10.1001/jama.2017.17606; Scholz, K. H., Maier, S. K., Maier, L. S., Lengenfelder, B., Jacobshagen, C., Jung, J., Fleischmann, C., Werner, G. S., Olbrich, H. G., Mudra, R. O. H., Seidl, K., Schulze, P. C., Weiss, C., Haimerl, J., Friede, T., & Meyer, T. (2018). Impact of treatment delay on mortality in ST-segment elevation myocardial infarction (STEMI) patients presenting with and without haemodynamic instability: results from the German prospective, multicenter FITT-STEMI trial. *European Heart Journal*, *39*(13), 1065-1074. doi: 10.1093/eurheartj/ehy004

Access to care is inextricably linked to coverage,⁵ and RME can provide that access. Providers are more likely to accept a patient if they know there is a reimbursement source.⁶ Taking away RME will inevitably deter some providers from promptly initiating treatment needed for a potentially life-threatening condition, such as cancer.

[CMS Administrator Seema Verma's recent explanation](#) for the rejection of Kansas' request to impose Medicaid life time limits applies equally here:

"We seek to create a pathway out of poverty, but we also understand that people's circumstances change, and we must ensure that our programs are sustainable and available to them when they need and qualify for them."

Conclusion

Eliminating RME makes even worse the plight of uninsured impoverished Floridians, who by accident of geography cannot get full coverage through their state Medicaid program. While RME is limited and short-term, it's at a critical time when people are likely to need critical medical services. Taking away this coverage is cruel, arbitrary and has no sound policy basis.

Therefore, we urge CMS to reject Florida's request to waive retroactive Medicaid eligibility. Thank you for your consideration of these comments. If you have any questions or need further information, please contact me.

Sincerely,

/s/ Anne Swerlick

Anne Swerlick
Health Policy Analyst/Attorney
Swerlick@fpi.institute
(407)459-8658

⁵ Kaiser Family Foundation, Key Facts About the Uninsured Population, November 29, 2017, <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>

⁶ Safety Net Hospital Alliance of Florida, letter to AHCA, April 13, 2018, p. 3 (letter attached).