



FLORIDA HEALTH JUSTICE PROJECT

Delivered via e-mail

1115 MMA Waiver-Comprehensive Amendment Request
Agency for Health Care Administration
2727 Mahan Dr., Building 3
Tallahassee, FL 32308
FLMedicaidWaivers@ahca.myflorida.com

Re: 1115 Research and Demonstration Waiver, Project Number 11-W-00206/4

Dear Secretary Marsteller:

Florida Health Justice Project submits these comments in response to the Agency for Health Care Administration's (AHCA's) request to amend the 1115 Managed Medical Assistance (MMA) waiver. Florida Health Justice Project engages in comprehensive advocacy to expand health care access and promote health equity for vulnerable and marginalized Floridians.

Extension of Post-Partum Coverage

We applaud AHCA for taking action to implement Chapter 2021-41, Laws of Floridaⁱ extending Medicaid post-partum coverage from 60 days to one year. However, we have concerns about implementing these changes through Florida's MMA 1115 Waiver rather than a state plan amendment, as authorized under the American Rescue Plan Act of 2021 (ARPA).

When Chapter 2021-41, Laws of Florida was enacted the Legislature gave no indication that it intended this change to be temporary and carried out through a time-limited demonstration waiver. Rather, this law was enacted as a permanent change.

We understand and commend the agency for trying to implement this change prior to April 1, 2022 when the new ARPA provision takes effect. However, we urge AHCA to accomplish this by pursuing a state plan amendment in addition to a "stop gap" waiver amendment which would automatically expire when the state plan amendment takes effect. This is the pathway currently under consideration by the federal Centers for Medicare and Medicaid Services (CMS) in reference to Massachusetts' requestⁱⁱ to extend post-partum coverage.

Moreover, coverage for beneficiaries under post-partum Medicaid eligibility is currently protected under the federal "continuous coverage" requirement likely to remain in place at least through January 2022.ⁱⁱⁱ After the public health emergency ends this coverage cannot be terminated until a full review of the beneficiary's circumstances is completed and the beneficiary is provided at least ten days advance notice and an opportunity for a hearing to contest a termination decision.^{iv} Given this timing there will be little, or possibly no gap in coverage for these beneficiaries with a state plan amendment effective April 1, 2022.

There is also more funding certainty for the state in pursuing the state plan option. As staff indicated at the public hearing, there is no time limit for the federal government to act on a waiver amendment request, so approval could be delayed past April 1, 2022, when the ARPA provision takes effect. Approval for the state plan amendment can be retroactive to April 1, 2022, allowing the state to draw down federal funding from that date, unlike an 1115 waiver approval which can only be applied prospectively.

Another concern we have with the waiver amendment request is that the public notice document does not include key information. Specifically, it does not specify income eligibility limits for this extended coverage, or timeframes within which AHCA seeks to operationalize the waiver amendment. Even for a short-term fix, the final waiver request submitted to CMS should include this information.

Waiver of Retroactive Medicaid Coverage

The state's proposed amendment on retroactive Medicaid coverage essentially requests permission to continue this benefit cut through June 2030 with no further federal oversight.

We continue to be deeply concerned about the harmful impact of this waiver on beneficiaries and intend to ask the Secretary of the U.S. Department of Health & Human Services (HHS) to withdraw its authorization for Florida to continue this experiment. HHS is authorized to take this action when it finds that the experiment is not likely to achieve the statutory purposes of Medicaid.^v That purpose is to *promote coverage*, not take it away.

[FPI's comments](#) submitted to HHS at the time the state initially sought this waiver in 2018 are equally relevant today. Moreover, this experiment should also be considered in the context of [newly released research](#)^{vi} showing crushing medical debt across the country, but highest in states like Florida that have not expanded their Medicaid programs. Taking away retroactive coverage exposes thousands of Floridians, primarily seniors and people with disabilities, to even more medical debt.

And continuing this waiver during this unprecedented pandemic and economic downturn is particularly cruel given massive job and insurance coverage losses. Uninsured people face even greater risks of facing substantial medical debt due to high treatment costs for COVID-19. The resulting health and economic suffering could be greatly mitigated through reinstatement of retroactive Medicaid coverage.^{vii}

The State claims that this experiment will encourage people to enroll in Medicaid quickly instead of waiting until they are very sick. But those in the coverage gap -- people without a severe disability or with income above the Medicaid limits, who do not make enough money for a subsidized Marketplace plan -- are facing a double whammy merely by accident of geography. Because they live in Florida, a state that has not expanded Medicaid, they have no ability to enroll in ongoing coverage when they are healthy and, when they become sick enough to qualify for Medicaid, Florida denies them the lifeline of retroactive coverage for medical bills incurred due to the illness or accident that led to their qualifying disability. Simply put, Florida's elimination of retroactive Medicaid coverage results in devastating medical debt for individuals who are unexpectedly rendered disabled. *That result does not, as this experiment requires, promote Medicaid coverage.*

10 Year Waiver Extension

We will also be requesting HHS to withdraw the 10 year extension of Florida's MMA 1115 waiver which was covertly granted in January 2021 at the eleventh hour of a transition to the new federal administration. Such authorization is unprecedented and in violation of federal law.

Remote Participants Were Not Able to Fully Participate in the Public Meeting/Hearing

We appreciate that AHCA provided a remote/online hearing option particularly as the pandemic is surging. But this option was implemented in a way that prohibited remote attendees from fully participating in the hearing.

Specifically, remote attendees were required to submit questions/comments in an online chat box. Only AHCA staff could see those entries and staff decided what to read aloud and share with the public. Staff did not read those entries verbatim, but significantly paraphrased them and omitted certain key points. Nor were the authors/organizations submitting the comments shared with the public.

This could have easily been rectified by allowing all participants to see each other's comments/questions. In addition, agency staff could have unmuted individual participants to verbally present their comments/questions.

While all participants were provided the option to submit written comments, this is no substitute for a properly conducted public hearing.

Thank you for your consideration of these written comments and please let us know if you have questions or need additional information.

Sincerely,

/s/ Alison Yager

Alison Yager
Executive Director

ⁱ Chapter 2021-41, Laws of Florida, <http://laws.flrules.org/2021/41>

ⁱⁱ Letter from Mary Lou Sudders, Secretary, Massachusetts Executive Office of Human Services to Liz Richter, Acting Administrator, CMS, June 8, 2021, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ma-masshealth-pa6.pdf>

ⁱⁱⁱ <https://ccf.georgetown.edu/2021/01/24/biden-administration-promises-predictability-on-future-extensions-of-the-public-health-emergency/>

^{iv} CMS, Dear State Health Official Letter, "Updated Guidance Related to Planning for the Resumption of Normal State Medicaid, Children's Health Insurance Program (CHIP) and Basic Health Program (BHP) Operations Upon Conclusion of the Public Health Emergency, August 13, 2021, CMS, SHO# 21-002, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-002.pdf>

^v 42 U.S.C. § 1315

^{vi} S. Kliff, M. Sanger-Katz, "Americans Medical Debts Are Bigger Than Was Known Totaling \$140 Billion," New York Times, July 20, 2021, <https://www.nytimes.com/2021/07/20/upshot/medical-debt-americans-medicaid.html>

^{vii} P. Shafer, et al., "Medicaid Retroactive Eligibility Waiver Will Leave Thousands Responsible for Coronavirus Treatment Costs," May 8, 2020, Health Affairs, <https://www.healthaffairs.org/doi/10.1377/hblog20200506.111318/full/>