FLORIDA HEALTH JUSTICE PROJECT, INC.

January 8, 2018

RE: Comments to Proposed Rules 65A-1.205, .701-.705, .707.-.708., and .716 (Related to Medicaid Eligibility Determinations)

To Whom It May Concern:

The Florida Health Justice Project, Inc. (FHJP) appreciates the opportunity to comment on the Florida Department of Children and Families Proposed Rules 65A-1.205, .701-.705, .707.-.708., and .716 of the Florida Administrative Code (Related to Medicaid Eligibility Determinations). Our mission is to help ensure access to health care and to improve health outcomes, with a focus on vulnerable low-income Floridians.

These written comments are submitted in response to the rule workshop held on January 3, 2019. Please feel free to contact us via telephone at: (786) 558-4950 or via email at: harmatz@floridahealthjustice.org if you have any further questions about the comments below. In addition, please provide us an updated draft of the proposed rules once you integrate any changes. Thank you.

Sincerely,

/s/Katy DeBriere & Miriam Harmatz

65A-1.205, Eligibility Determination Process

Under **65A-1.205(1)(a)**: after the sentence which ends "the Department will forward an electronic file to the FFM" add a sentence which states "applicants whose income was calculated based on the Modified Adjusted Gross Income (MAGI) budgeting methodology and are ineligible for Medicaid as a result will be transferred to the Children's Health Insurance Program (CHIP) for a determination of eligibility."

Under **65A-1.205(1)(b)**, the proposed language states that "[t]he Department must verify the Social Security Numbers (SSNs) for each applicant for public assistance benefits." However, under federal law and according to the Department's Policy Transmittal #P-18-04-0010, there are exceptions to verification of SSNs for determining Medicaid

eligibility. *See* 42 C.F.R. §435.910(h)(1).

Specifically, under 42 C.F.R. §435.910(h)(1), an individual is not required to provide an SSN for purposes of a Medicaid application when the individual:

> (i) Is not eligible to receive an SSN;
>
> (ii) Does not have an SSN and may only be issued an SSN for a valid non-work reason in accordance with 20 C.F.R. §422.104; or
>
> (iii) Refuses to obtain an SSN because of well-established religious objections.

The Department's current policy transmittal requires that an individual apply or attempt to apply for an SSN before the individual's Medicaid eligibility will be determined. The transmittal conflicts with federal law in two notable ways:

(1) 42 C.F.R. §435.910(h)(1)(ii) states that an individual eligible for an SSN on the basis of a valid non-work reason are exempt from providing an SSN for purposes of their Medicaid eligibility. Thus, even where an individual is eligible to receive an SSN (for a valid non-work reason), the regulation does not require the individual apply for the SSN in order to be Medicaid eligible. Contrary to the federal regulation, the DCF policy transmittal does require those in (ii) (and (i)) to apply for an SSN before DCF will approve a Medicaid application. DCF should amend its policy transmittal and also clarify in rule that, under the federal regulation, individuals who meet an exemption under §435.910(h)(1) are neither required to supply an SSN for purposes of a Medicaid application nor are they required to attempt to apply for an SSN.

(2) Under 42 C.F.R. §435.910(f), the Department "must not deny or delay services to an otherwise eligible individual pending issuance or verification of the individual's SSN by SSA or if the individual meets one of the exceptions in paragraph (h) of this section." Requiring an individual to attempt to apply for an SSN prior to the Department issuing an eligibility determination would delay Medicaid eligibility to an otherwise eligible individual who meets one of the exceptions in 42 C.F.R. §435.910(h). Thus, the Department's current requirement that an individual "attempt to apply" for an SSN directly conflicts with the language in 42 C.F.R. §435.910(f).

Regardless of the Department's position on whether its Policy Transmittal #P-18-04-0010 conflicts with the language of 42 C.F.R. §435.910(h)(1), it is important to note that, if the Department maintains the position that an individual must attempt to apply for an SSN as part of the Medicaid application process, the Department is obligated to assist those

individuals with their SSN application. *See* 42 C.F.R. § 435.910(e); *see also, Bird v. Dep't of Job & Family Servs.*, No. 1-08-50, 2009 WL 427527 (Ohio Ct. App. Feb. 23, 2009).

Thus, in light of the above, please change the language in 65A-1.205(1)(b) to reflect the exceptions set forth in 42 C.F.R. 435.910(h)(1). Furthermore, please clarify that individuals do not need to apply for an SSN in order to meet an exception.

65A-1.205(7) states that "[i]n accordance with 42 C.F.R. §435.907(e)(3), the Department will collect the Social Security Number of individuals who are not requesting assistance." The phrasing of this rule does not accurately reflect 42 C.F.R. §435.907(e)(3) which clearly states that provision of an SSN by a non-applicant is voluntary and that the Department must notify the non-applicant that provision of an SSN is voluntary.

To require a non-applicant to provide an SSN without notice to the non-applicant that the provision is voluntary will chill applications on behalf of eligible children whose caregivers do not have a lawful immigration status. Thus, we propose that you change 65A-1.205(7) to state that: "In accordance with 42 C.F.R. §435.907(e)(3), the Department may collect the Social Security Number of individuals who are not requesting assistance but must provide clear notice to non-applicants that providing their SSN is voluntary as well as provide information about the Department's purpose for collecting the non-applicant's SSN."

65A-1.701, Definitions

The definition of Florida's iBudget waiver is found at both subpart (18) as well as (32).

Add a definition of Title XXI.

65A-1.702, Special Provisions

65A-1.702(4), states that "as a condition of eligibility for Medicaid, the Department must require an individual to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits *to which they are entitled*, unless the can show good cause, as defined subparagraph (2)(c) of this rule, for not doing so. After the Department notifies an individual that they must apply for other benefit(s), if the individual fails to do so, they are not eligible for Medicaid." (emphasis added).

This language reflects 42 C.F.R. §435.608. However, use of the term "disability benefits" is confusing and causes Economic Self Sufficiency employees to erroneously require individuals to apply for Supplemental Security Income (SSI) as a condition of Medicaid eligibility. The Department's position is that SSI applications are not required to determine eligibility. We propose amending the language in 65A-1.702(4) to more closely track the language in 42 C.F.R. §435.608 eliminating use of the term "~~disability~~

~~benefits~~" and instead state "[a]s a condition of eligibility, the Department must require applicants and beneficiaries to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, OASDI benefits, railroad retirement benefits, and unemployment compensation. Disability benefits do not include applications for Supplemental Security Income."

Furthermore, the proposed rule and 42 C.F.R. §435.608 both state that individuals are only required to apply for benefits "to which they are entitled." Not every individual who is eligible to receive SSI Related Medicaid on the basis of disability will have other benefits "to which they are entitled."

For example, it would be illogical to require a child under age 18 to apply for railroad retirement benefits or unemployment compensation. Similarly, it would not be reasonable to require an individual who is not a veteran or the child or spouse of a veteran to apply for veterans' compensation and pensions.

Thus, we propose that criteria be developed whether in rule or policy to establish whether an individual should be identified as a person that must apply for benefits as a condition of eligibility because their status indicates that there are benefits "to which they are entitled."

For example, to determine whether an individual must apply for OASDI benefits as a condition of Medicaid eligibility, we propose that the Department develop the same criteria used in Tennessee's Manual that governs eligibility for their Medicaid program. Suggested language is underlined below.

Under Policy Manual Number 200.015 which governs "Application for Other Program Benefits," Tennessee asks that workers determine whether Social Security benefits are benefits to which the applicant is entitled by reviewing whether:

An individual or his or her FRR is:

• At least age 62; or

• Disabled based on Social Security criteria; or

• Is a child under 18 of a deceased, retired or disabled worker; or

• Is the child who became disabled before age 22 of a deceased, retired or disabled worker.

These determinations can be made using data exchange with Social Security and/or asking the applicant directly. Notably, DCF is required to verify all information under

available data match before requiring that verification directly from the Medicaid applicant. *See generally*, 42 C.F.R. §§435.940 - 435.965

Since the state of Florida has decided to eliminate retroactive Medicaid eligibility, ensuring that individuals potentially eligible for SSI Related Medicaid are able to apply without unnecessary barriers is critical. The Department should not erroneously require potential SSI Related Medicaid applicants to attempt to apply for benefits for which there is no possibility they are entitled.

65A-1.703, Family-Related Medicaid Coverage Groups

The citation to Title XIX in 65A-1.703(1) is incorrect. Please edit to reflect the correct citation. Please also consider adding a sentence that children under age 21 do not need to live with a relative within the fifth degree of [list the specified relationships] in order to be considered eligible for Family-Related Medicaid.

We make this comment because a regional office denied Medicaid eligibility to an 18 year old child on the basis that he did not live with a relative within the 5th degree within the list of specified relationships. *See T.H. v. DCF*, Appeal #16F-08713. At the workshop, this issue was discussed with Nathan Lewis who confirmed that DCF does not require that child under age 21 live with a relative in order to qualify under this Family-Related coverage group.

Subpart (10) of the same rule requires that, in order for children under age 21 to qualify for the Medically Needy program, they must live with a relative within the fifth degree of the specified relationships as set forth in rule. Again, during the workshop, DCF stated that it is only parents and caretakers who are required to live with a relative in order to qualify for Family-Related Medicaid. DCF should clarify the rule by adding the underlined language above.to accurately reflect that children under age 21 do not need to live with any relative in order to qualify for Family-Related Medicaid coverage.

FORMS

Are You Disabled And Applying For Medicaid?

Add a sentence on elimination of retroactive Medicaid eligibility which states that: non-pregnant adults who are 21 and older are no longer eligible under Florida law for retroactive Medicaid and, therefore, should not delay their Medicaid application.

Family Related Medical Assistance Application

Add a sentence under "What you may need to apply" stating that, if you have difficulty obtaining documentation, then DCF will assist.

We have a general comment about the verification forms provided during the hearing. Please note that DCF is obligated to use electronic data match systems to the greatest extent possible before requiring a Medicaid applicant to provide any form of verification. *See generally*, 42 C.F.R. §§435.940 - 435.965.