Florida Health Justice Project

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Justin Senior, Secretary
Agency for Health Care Administration
2727 Mahan Drive, MS #20
Tallahassee, FL 32308

Submitted via email: FLMedicaidWaivers@ahca.myflorida.com

Re: Proposed Amendment to Florida's Medicaid 1115 MMA Amendment (Project Number 11-W-00206)

Dear Secretary Senior:

This comment letter is submitted on behalf of the Florida Health Justice Project (FHJP). Our mission is helping to ensure access to low income Floridians with a focus on vulnerable low-income populations.

The Agency for Health Care Administration's (AHCA's) proposal to waive the federal Medicaid statute's provision allowing for up to three months of retroactive Medicaid eligibility (RME) will have adverse impacts on access to health care—particularly for seniors and adults with disabilities—some of the most vulnerable in the state. This proposal is contrary to the objectives of the Medicaid Act, it undermines the purpose of the RME provision passed by Congress, and it fails to meet requisite criteria for a Section 1115 Demonstration Waiver.

Retroactive Eligibility is a Critical Provision of the Medicaid Act

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. Furthermore, the process of preparing a Medicaid application may take weeks. Elimination of RME puts 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 will be at risk of incurring crushing financial stress and debt.

Additionally, the state's care system for elderly and disabled Floridians, including safety net hospitals and nursing homes, depend on retroactive Medicaid. If the RME period is eliminated, these health care providers may be unable to provide essential but expensive care until a Medicaid application is filed and approved.

The proposal also fails to make any exception for low-income Medicare beneficiaries in Florida who qualify for the Specified Low-Income Medicare Beneficiary (SLMB) or Qualified Individual-1 (QI-1). These programs pay Medicare Part B premium ($134/month.) Eliminating retroactive coverage means that low income Medicare beneficiaries who qualify for SLMB or QI-1 but who did not apply concurrent with the month of their initial Medicare enrollment will lose about $400. This is a tremendous sum for these low-income individuals. In contrast, the state saves very little. Indeed, the federal government pays 100 percent of the cost for QI-1 eligible individuals so there is absolutely no state savings achieved through eliminating their RME for this population; the proposal only serves to hurt these low income seniors and persons with disabilities. Put another way, the state's rationale for this proposal, "to enhance fiscal predictability" makes no sense for this group of these low-income Medicare beneficiaries. Again, for QI-1s, there are no state costs, and for SLMBs, the costs of retroactive eligibility for this group are predictable, i.e. a flat premium for three months of eligibility.

There is also a risk that the Department of Children's & Families Economic Self Sufficiency staff (DCF-ESS) who process Medicaid applications will not receive adequate and timely training and oversight to correctly implement this change to the RME eligibility period. For example, staff may conflate the concept of a "retroactive period" with the federal and state requirement that Medicaid eligibility begins in the month of application (as opposed to the month of approval). As previously mentioned, the individuals impacted by Florida's effort to shorten the RME period include those with disabilities, and their Medicaid application processing period is generally at least ninety days. If DCF-

ESS staff misunderstand or misapply the change, these individuals could lose additional months of eligibility to which they are lawfully entitled in addition to elimination of their RME period.

The Proposed Waiver Fails to Meet the Requirements of Section 1115

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.

Also, while Section 1115 of the federal Medicaid Act allows HHS to temporarily waive certain requirements of the Act to experiment, pilot, or demonstrate the efficacy of a new approach to the administration of the Medicaid program, HHS can only waive requirements found within the provisions of 42 U.S.C. § 1396a. Although RME is referenced in §1396a of the Medicaid Act, it is separately defined in §1396d. In other words, the RME provision is not within the waiver authority of the Secretary because the provision lies outside of §1396a. There is also no evidence that it constitutes a 'novel approach" that would "improve medical assistance for low income people" thereby belying the stated purpose of Section 1115.

Conclusion

Thank you for considering these comments. We urge AHCA to reconsider submitting this amendment as it contravenes the objectives of the Medicaid Act.

Sincerely,

s/Miriam Harmatz, Katy DeBriere

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