



via email to FLMedicaidWaivers@ahca.myflorida.com

February 21, 2024

Agency for Health Care Administration
2727 Mahan Drive, MS #20
Tallahassee, Florida 32308

Re: Section 1115 Research and Demonstration Waiver: Children's Health Insurance
Program Eligibility Extension Request

Dear Sir or Madam:

Florida Health Justice Project appreciates the opportunity to submit these comments in response to the request by the Agency for Health Care Administration (AHCA) for a new 5-Year Section 1115 Title XXI Research Demonstration Waiver.

Florida Health Justice Project (FHJP) is a nonprofit organization engaged in comprehensive advocacy aimed at expanding health care access and promoting health equity for vulnerable and marginalized Floridians. We have worked extensively on issues connected to health care coverage for Florida children in low-income families. This work includes providing training and materials as well as extensive outreach and assistance for consumers whose children may be subject to termination or have lost Medicaid during the state's post-PHE redetermination process ("the unwind") which began in April 2023. [Our website](#) contains links to the consumer and advocate materials FHJP created regarding children's eligibility for KidCare programs. A sampling of the consumers we have assisted have shared their stories on [this web page](#) (see, e.g., [Laurie and Adam](#)).

At the outset, we want to express our appreciation of the state's intention to expand access to subsidized health insurance for children. At the same time, we also must underscore that many Florida families are currently being harmed by the ongoing delay in implementing this expansion. When House Bill 121 was passed and enacted into law on June 22, 2023, the Legislature intended it to be fully implemented as of January 1, 2024. The legislative analysis for HB 121 identified over 42,000 currently uninsured children who would benefit from the expanded eligibility of subsidized KidCare. This

number has surely risen dramatically, as since that time at least 461,000 additional children have been terminated from Medicaid through the unwinding process.¹

There can be no question that there is a pressing need for expanded KidCare eligibility at this precise moment in time. Specifically, families with children with complex conditions, who are scheduled under [Florida's Medicaid Redetermination Plan \("Plan"\)](#) to undergo redetermination at the end of the unwind period, March-April 2024, have an immediate need for the expanded KidCare eligibility levels to be implemented. *See* Plan at 12. It is anticipated that a number of these children who are no longer eligible for Medicaid will need to transfer to one of the other Florida KidCare Programs. For example, Gillian's child [Penelope](#) was recently terminated from Medicaid. The family is over income for Medicaid, but they would qualify for the subsidy if/when the expansion is implemented. Gillian could have enrolled Penelope in her family's low-cost marketplace plan, but such a plan would not provide adequate coverage for a child with Penelope's complex conditions. She needs to be enrolled in a KidCare plan. The family will be struggling to pay the premium, but it is slightly less than the full cost plan available now. *See* Penelope, Chapter 2 [story link](#).

We appreciate the opportunity to comment on certain elements of the proposed waiver, including the complex tier structure and amount of premiums, that we believe adversely impact the Legislature's intent to expand health care access to children.

While the proposed waiver application continues Florida's current policy of imposing premiums for KidCare, there is significant research showing that the imposition of premiums negatively impacts the ability of low-income individuals to obtain and maintain coverage in State Children's Health Insurance Programs (CHIP) such as KidCare.² This research shows that premiums in CHIP programs deter initial enrollment, shorten lengths of enrollment, and increase disenrollment of the very population the program is intended to serve. Indeed, when Florida last increased its KidCare premiums by just \$5 per month, it experienced a 61% decrease in enrollment lengths in families under 150% of FPL, and a 55% decrease in enrollment length in families with incomes 150-200% of FPL.³ Furthermore, as CMS recently addressed with

¹ *See* Georgetown University McCourt School of Public Policy Center for Children and Families, "How many children are losing Medicaid." <https://ccf.georgetown.edu/2023/09/27/how-many-children-are-losing-medicaid/>

² *See, e.g.*, Kaiser Family Foundation (2017). The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings. <https://www.kff.org/medicaid/issue-brief/the-effects-of-premiums-and-cost-sharing-on-low-income-populations-updated-review-of-research-findings/>

³ Herndon JB, Vogel WB, Bucciarelli RL, Shenkman EA. The effect of premium changes on SCHIP enrollment duration. *Health Serv Res.* 2008 Apr;43(2):458-77. <https://doi.org/10.1111/j.1475-6773.2007.00777.x>

respect to a Section 1115 Medicaid demonstration waiver pertaining to Indiana’s Healthy Indiana Plan (HIP), premium requirements interfere with enrollment by causing confusion over the amounts owed, the available methods of payment, and the process and ability to re-enroll following disenrollment.⁴

In the face of this research, Florida’s waiver application appears to seek to implement House Bill 121 in a manner likely to be disruptive to children’s coverage. Although the legislation calls for “at least three but no more than six” premium tiers and is silent as to increases, the proposed waiver would maximize the complexity of the premium structure by having six premium tiers and imposing a three percent increase every year. We urge the state to reduce the tiers to the minimum of three tiers required by eliminating proposed Tiers 4-6. In addition to creating unnecessary complexity, the proposed premiums in these tiers are too high to be affordable for families in these income ranges. See [Penelope, Chapter 2](#). For the same reasons, we oppose the proposed annual automatic increase in premium levels.

Moreover, the waiver application states that it seeks authority to implement these premiums “as a condition of enrollment” (Table 6). It is unclear whether Florida intends to require premiums only as a condition of *initial* enrollment, which is permissible, or also as a condition of *continuous* enrollment, which would contravene Section 5112 of the Consolidated Appropriations Act, 2023 (CAA). We urge AHCA to amend the waiver application to make clear that it will comply with the continuous enrollment provision of the CAA in the event of non-payment of premiums.⁵

We note that Arizona recently submitted a [request for a Section 1115 Waiver](#) to expand its CHIP program eligibility threshold from 200% to 225% of the federal poverty level, and this waiver was [approved by CMS](#) on February 16, 2024. Arizona’s waiver does not impose enforceable premiums in contravention of the 2023 CAA. We urge Florida to follow Arizona’s example.

Finally, as the purpose of a Section 1115 Waiver is to assist in promoting the objectives of the Social Security Act, the success of the waiver can only be measured

⁴ See CMS letter to Indiana, Dec. 22, 2023 pp. 4-5: https://www.medicaid.gov/sites/default/files/2023-12/in-cms-ltr-to-the-state-12222023_1.pdf

⁵ We are aware that Florida has challenged the enforceability of Section 5112 of the 2023 CAA as interpreted by the [Centers for Medicare and Medicaid Services](#) (CMS) that Section 5112 prohibits disenrollment of children from CHIP programs for non-payment of premiums. See *State of Fla. v. Centers for Medicare & Medicaid Servs.*, Case No. 8:24-cv-317 (M.D. Fla) (filed Feb. 1, 2024). This lawsuit is entirely independent of the Section 1115 waiver application process and must proceed on its own course; the state may not simply incorporate into its waiver application the relief it is seeking to achieve through litigation. Florida was well aware of CMS’s interpretation of Section 5112 of the CAA (issued Oct. 27, 2024) when it initiated its waiver application (Jan. 23, 2024).

through the capture and analysis of relevant data. We urge the state to commit to greater transparency regarding its KidCare programs, including timely public release of detailed enrollment data. Given the concerns identified above regarding the potential negative effects on enrollment due to the proposed level and complexity of premiums, this published data should include at a minimum the number of children enrolled each month, differentiating between new enrollments and re-enrollments, as well as the number of monthly disenrollments including the reason for the disenrollment.

Thank you for your consideration of these written comments. We welcome the opportunity to discuss these matters with you at any time.

Sincerely,

s/Lynn C. Hearn _____

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