



# FLORIDA HEALTH JUSTICE PROJECT

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April 28, 2024

Hon. Xavier Becerra

Secretary, U.S. Department of Health and Human Services

200 Independence Ave. SW

Washington, DC 20201

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

Dear Secretary Becerra:

Florida Health Justice Project appreciates the opportunity to submit these comments in response to Florida's request for a new 5-Year Section 1115 Title XXI Research Demonstration Waiver regarding its Children's Health Insurance Program (CHIP).

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"). [Our website](#) contains links to the consumer and advocate materials FHJP created regarding children's eligibility for KidCare programs. (see, e.g., [Q & A for Florida families whose children with complex conditions are now over income for Medicaid](#)). A sampling of the consumers we have assisted have shared their stories on [this web page](#) (see, e.g., [Laurie and Adam](#)).

### **Support For Immediate Expansion From 200% to 300%**

We urge CMS to approve the expansion of CHIP eligibility in Florida from 200 to 300% of the federal poverty limit (FPL), and to do so as quickly as feasible. When House Bill 121 was passed and enacted into law on June 22, 2023, Florida's Legislature intended it to be fully implemented as of January 1, 2024, prior to the end of the unwind.

Unfortunately, Florida did not even submit its proposed waiver to CMS for approval until February 23, 2024, and then had to refile it due to omissions in its initial filing which caused further delays. Thus, this important expansion of health coverage has already been delayed by four (4) full months, with no actual implementation date immediately in sight. Florida's families are eagerly awaiting its availability.

Meanwhile, Florida has marched forward with its Medicaid unwinding process, [having terminated over 1.4 million individuals from Medicaid](#) in the last year. Florida does not report or publish any demographic data regarding these terminations, but its Medicaid enrollment data indicates a loss of at least 485,000 children from the Medicaid rolls during this same period.<sup>1</sup> A net increase of just 62,000 in Florida's CHIP enrollment during this period indicates that very few of the children losing Medicaid are enrolling in CHIP. Expansion of the CHIP eligibility limit will be a step toward addressing this gap.

The need for this expansion is especially urgent for families with children who suffer from complex medical conditions. To Florida's credit, the state's [Medicaid Redetermination Plan](#) ("Plan") postponed redeterminations for these children until the end of the unwind. (see Plan at 12.). Thus, many very sick children are being terminated from Medicaid *right now* at the end of Florida's unwinding process. In late March, FHJP began hearing from families with children who require daily medical care. (See, e.g., [Orlando Sentinel, "After losing Medicaid, parents of Florida's sickest kids are in limbo"](#), March 28, 2024.) Those who are no longer eligible for Medicaid need immediate CHIP coverage, and many of these families are desperately awaiting the eligibility expansion.

### **Concern Regarding Florida's Proposed Premiums**

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 CHIP programs such as KidCare.<sup>2</sup> 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

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<sup>1</sup><https://ahca.myflorida.com/medicaid/medicaid-finance-and-analytics/medicaid-data-analytics/medicaid-monthly-enrollment-report>; 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/>

<sup>2</sup> 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/>

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.<sup>3</sup>

Furthermore, as CMS recently addressed with 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.<sup>4</sup>

Although Florida’s waiver application states, without any supporting analysis, that “[the] new premium structure is not expected to impact general disenrollment trends or processes” (Waiver p. 9), the research strongly suggests otherwise. We are concerned that the premium structure and amounts in Florida’s proposal will actually negatively impact the ability of many children in Florida’s CHIP program to obtain and maintain coverage.

Specifically, the proposed premiums in the upper tiers are too high to be affordable for families in these income ranges. *See, e.g., Penelope, Chapter 2.* And although the legislation calls for “at least three but no more than six” premium tiers and is silent as to increases, the proposed waiver maximizes the complexity of the program by having six premium tiers and by imposing an automatic three percent increase every year. We urge CMS to approve only three premium tiers, by eliminating proposed Tiers 4-6, and to disallow automatic annual increases.

### **Florida Must Be Made to Comply With Continuous Coverage Requirements**

Although the waiver application states “Florida does not anticipate needing any waivers of the provision under Title XXI of the Social Security Act, ” (Waiver Table 8), in the same table Florida requests authority to impose its proposed premium structure “as a condition of enrollment.” This would contravene Section 5112 of the Consolidated Appropriations Act, 2023 (CAA), which prohibits disenrollment of children from CHIP programs for non-payment of premiums after January 1, 2024.<sup>5</sup>

[Recent data released by Florida KidCare](#) indicates that Florida is currently violating the CAA by continuing to disenroll children from CHIP for nonpayment of

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<sup>3</sup> 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>

<sup>4</sup> 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](https://www.medicaid.gov/sites/default/files/2023-12/in-cms-ltr-to-the-state-12222023_1.pdf)

<sup>5</sup> See CMS, “Mandatory Continuous Eligibility for Children in Medicaid and CHIP Frequently Asked Questions October 27, 2023.” <https://www.medicaid.gov/sites/default/files/2023-10/faq102723.pdf>

premiums.<sup>6</sup> CMS must not agree to excuse Florida from a federal law passed by Congress to protect our country's youngest and most vulnerable residents.

We ask that CMS's approval of Florida's waiver be contingent upon Florida's compliance with the 2023 CAA.

### **Call for Transparency and Accountability**

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 through the capture and analysis of relevant data. 42 C.F.R. § 431.428.

Florida proposes extremely modest evaluation parameters: (1) an increase in CHIP enrollment for children with income between 200 and 300% of FPL, and (2) improvement *or maintenance* of the rate of uninsured children in Florida under age 19. (Waiver Table 7).

We urge CMS to evaluate Florida's waiver application against more meaningful parameters, including the number of CHIP enrollees with incomes between 200 and 300% of FPL *as a percentage of those eligible*, and a *discernible reduction* in the rate of uninsured children in Florida. If Florida is permitted to disenroll children due to non-payment of premiums, it must also be required to track and report the number of children disenrolled on this basis.

Additionally, because the waiver's success can best be evaluated if data regarding its operation is in the public domain, we request that CMS require the State to provide greater transparency regarding its CHIP programs. We suggest the State be required to publish data monthly that includes, at a minimum, the number of children enrolled each month at each premium tier, differentiating between new enrollments and re-enrollments, as well as the number of monthly disenrollments, including the reason for the disenrollment. This data should be available by county, race and ethnicity.

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We thank you for your careful consideration of the waiver application as well as these and all the other written comments submitted to CMS. We would welcome the opportunity to discuss Florida's proposed waiver with you at any time.

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<sup>6</sup> Florida has made clear its disagreement that Section 5112 of the CAA 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). As of the date of these comments, no ruling has been issued in the case.

Sincerely,

*s/Lynn C. Hearn* \_\_\_\_\_

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