



October 6, 2022

Florida Health Justice Project (FHJP) submits comments on TennCare III's waiver of retroactive Medicaid eligibility (RME). We urge that Tennessee's waiver request to continue with the elimination of RME be rejected and that RME be restored.

FHJP is a nonprofit health advocacy organization whose mission is expanding access to healthcare with a focus on Florida's most vulnerable populations.

### **Waiver of Retroactive Medicaid Coverage in TennCare III**

Tennessee TennCare III's waiver of retroactive Medicaid coverage essentially requests permission to continue the denial of RME, a critical consumer protection for vulnerable populations.

Unfortunately, Florida has also received an 1115 waiver to eliminate RME for non-pregnant adults—and we have seen the harm caused by this waiver.

We are deeply concerned about the harmful impact of this waiver on beneficiaries and ask the Secretary of the U.S. Department of Health & Human Services (HHS) to withdraw its authorization for Tennessee 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.<sup>1</sup> That purpose is to *promote coverage*, not take it away.

"[George's](#)" story is a perfect example of how elimination of RME hurts low-income Floridians and safety net providers. In late January 2020, George suffered a heart attack and was rushed to the hospital. The paperwork for his Medicaid coverage was filed in February. Because his application was not submitted during the month of his hospitalization, he received a bill for \$62,000. This created significant stress for George and his family that would have been preventable before the elimination of retroactive coverage given his minimal income (only \$1100/month), he will never be able to pay the hospital bill, and a critical safety net provider will be further stressed.

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<sup>1</sup> 42 U.S.C. § 1315

[FHJP's comments](#) submitted to HHS at the time that Florida initially sought this waiver in 2018 are equally relevant today. Moreover, this experiment should also be considered in the context of [research](#)<sup>2</sup> showing crushing medical debt across the country, but highest in states like Tennessee and Florida that have not expanded their Medicaid programs. Taking away retroactive coverage exposes thousands of Tennesseans, primarily seniors and people with disabilities, to even more medical debt. It also disproportionately impacts people of color as Black families are nearly twice as likely as White families to obtain their health coverage through Medicaid.<sup>3</sup> The denial of retroactive Medicaid coverage compounds the already present racial disparities and inequities in health.

Continuing this waiver during the still ongoing 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.<sup>4</sup>

Section 1115 waivers are supposed to help states experiment with novel program components, but this is not novel or experimental. Retroactive Medicaid coverage has already been cut in other states, such as Florida, and imposes ruinous medical debt on the most vulnerable population.

The State claims that this experiment will allow money to be saved and reinvested in the TennCare program, but it really leaves money on the table by the State refusing to expand Medicaid.

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 injustice merely by accident of geography. Because they live in Tennessee, a state that (like Florida) 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, Tennessee 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, Tennessee'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.*

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<sup>2</sup> 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>

<sup>3</sup> <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity/>

<sup>4</sup> 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/>

## **10-Year Waiver Extension**

Finally, we join with Tennessee Justice Center in respectfully requesting HHS to withdraw the 10-year extension of Tennessee's 1115 waiver. This extension was granted late in January 2021 during the transition to the new federal administration.

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

Sincerely,

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