FAMILIESUSA
THE VOICE FOR HEALTH CARE CONSUMERS

June 5, 2018

The Honorable Alex Azar
Secretary,
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC

Re: Florida's Proposed Amendment Section 1115 Waiver to Eliminate Retroactive Coverage

Dear Secretary Azar,

Families USA appreciates the opportunity to provide comments on the Florida Agency for Health Care Administration's proposal to amend its 1115 Managed Medical Assistance Waiver to eliminate three-month retroactive coverage for non-pregnant Medicaid enrollees age 21 and older. Families USA is a national health care advocacy organization that supports policies and programs at the state and federal levels to expand access to quality, affordable health care, with a particular focus on policies that affect lower-income individuals. Florida's request, if granted, would directly and negatively affect access to health care for the groups we advocate on behalf of.

The state's request fails to meet the requirements of section 1115

Section 1115 of the Social Security Act **[**42 U.S.C. 1315**]**, "Demonstration Projects," gives the Secretary the authority to waive state compliance with section 1902 of the Social Security Act, State Plans for Medical Assistance. Retroactive coverage, section 1902(a)(34), is within the Secretary's waiver authority. However, the analysis of what the Secretary can and cannot waive under 1115 authority does not end merely because a service or feature of the program appears in section 1902.

The presence of an item in section 1902 is necessary, but not sufficient, for a request to meet the requirements of Section 1115. Section 1115 *also requires* that the waiver be: experimental, pilot or demonstration projects; be likely to promote the objectives of the Medicaid program; and be limited to the extent necessary for the state to carry out the experimental project.[1]

[1] Social Security Act Section 1115, Demonstration Projects [42 U.S.C. 1315].

Looking at the entirety of section 1115, Florida's request fails to meet that section's requirements and, therefore, must be denied.

The request does not support Medicaid program objectives.

The objectives of the Medicaid program (section 1901 of the Social Security Act **[**42 U.S.C. 1396**]),** are to enable states to furnish medical and rehabilitative services to individuals whose income and resources are insufficient to meet the costs of necessary services. Florida's request runs contrary to those objectives.

<u>Predictable negative impact on program recipients.</u>

In spite of the state's assertion that eliminating retroactive eligibility would have no direct impact on Medicaid recipients, data from states that have eliminated retroactive coverage, and the information in the state's own waiver application, indicate otherwise.

Data from states that have eliminated retroactive coverage show that eliminating retroactive coverage leads to greater consumer debt and lost health care coverage, an outcome that is in opposition to the objectives of the Medicaid program.

- Indiana state data showed that individuals racked up an average of $1,561 in Medicaid bills prior to Medicaid coverage becoming active under that state's waiver of retroactive coverage.[2]
- Iowa projected that its retroactive coverage waiver, which also applies to all Medicaid enrollees, would cause a 3,300 reduction in Medicaid eligibility.[3]

While Florida contends that eliminating retroactive coverage would have no direct impact on Medicaid recipients, the state also notes that approximately 39,000 non-pregnant individuals were made retroactively eligible in SFY 2015/2016.[4] A policy that would affect roughly 40,000 individuals is not without direct impact on individuals. The impact of eliminating that coverage will be enormous for each individual who needs it but no longer has access to it.

<u>Predictable negative impact on providers has ramifications for Medicaid enrollees' access to care.</u>

---

[2] MaryBeth Musumeci, et al, *Medicaid Retroactive Coverage Waivers: Implications for Beneficiaries, Providers and States* (Washington, DC: Kaiser Family Foundation, 2017) online at http://files.kff.org/attachment/Issue-Brief-Medicaid-Retroactive-Coverage-Waivers-Implications-for-Beneficiaries-Providers-and-States.

[3] State of Iowa, Dep't of Human Services, Iowa Wellness Plan, Project #11-W-00289/5, Section 1115 Demonstration Amendment, Attachment A–Public Notice at 2 (Aug. 2, 2017), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/ia-wellness-plan-pa4.pdf.

[4] Florida waiver application, page 6.

Granting this request would result in a higher uncompensated care burden for hospitals and other health care providers. Actuarial analyses of Medicaid payments have shown that about five percent of Medicaid payments occur during the retroactive eligibility period. Eliminating retroactive eligibility would result in about a 5 percent loss of Medicaid revenue for safety-net hospitals.[5] Revenue losses at that level would affect providers' fiscal viability, which could negatively impact Medicaid enrollees' access to care.

Retroactive eligibility means that providers can treat Medicaid eligible but unenrolled individuals and be assured of payment when those individuals gain Medicaid coverage. That increases provider willingness to treat the low-income uninsured. Eliminating retroactive coverage will reduce providers' willingness to treat those individuals—reducing low-income residents' access to medical care. That predictable outcome is contrary to the objectives of the Medicaid program.

These outcomes would hinder, rather than support, a state's ability to fulfill the program's objectives are not supported by 1115 authority and must be denied.

Retroactive coverage ensures health care access for Medicaid eligible individuals by addressing enrollment and eligibility issues unique to Medicaid.

Unique attributes of the Medicaid program make retroactive coverage critical to ensure patient access to care and provider program participation, furthering the program's objectives.

- <u>Annual eligibility determinations.</u> Unlike individuals with other types of coverage, individuals covered by Medicaid must re-establish eligibility annually. That process itself leads to significant enrollment drop-off at renewal, even for people who are otherwise eligible. The result is gaps in coverage. Retroactive eligibility can help preserve access to care for people despite those gaps.
- <u>Financial protection for patients and providers.</u> For low-income individuals facing sudden, catastrophic illness, retroactive coverage plays a critical role in preventing accumulation of medical debt and medical bankruptcies. That not only protects Medicaid eligible individuals, but reduces the financial strain of uncompensated care on hospitals and other health care providers who treat Medicaid eligible individuals who are not yet enrolled. That supports the fiscal health of providers so that they can better serve Medicaid enrollees and the community at large.

---

[5] Allen Dobson, *The Financial Impact of the American Health Care Act's Medicaid Provisions on Safety-Net Hospitals* (New York, NY: The Commonwealth Fund, June 2017) online at http://www.commonwealthfund.org/publications/fund-reports/2017/jun/financial-impact-ahca-on-safety-net-hospitals#/;

- Complex and lengthy enrollment. For individuals eligible for Medicaid because of a disability or age and income, the Medicaid eligibility process is complex. It is often not clear when eligibility begins.[6] People often need help gathering information and completing the eligibility process. In fact, a nursing home admission or need for home care can often be what provides individuals with the assistance they need to obtain the Medicaid coverage they are eligible for.
- Access to long-term services when needed. Retroactive coverage helps ensure individuals have access to long-term services when those services are needed. It allows providers to begin delivering long-term services with assurance that they will be paid when a patient's Medicaid eligibility is confirmed. Eliminating retroactive coverage will take that assurance away. Without retroactive coverage, long-term care providers are unlikely to begin service delivery until an individual's enrollment process is complete, a process than can be complex, as noted above. This will mean delays for patients needing long-term services, delays that can have disastrous consequences.

Florida's stated program objective is inconsistent with objectives of the Medicaid program.
In its application, Florida states that the objective of this amendment is "to enhance fiscal predictability by eliminating the three-month retroactive eligibility period for non-pregnant adults." This objective is not directly linked to improvement in health or the provision of health care to populations who can otherwise not afford that care. Enhancing state fiscal predictability is not an objective of the Medicaid program. It is an inappropriate objective for an 1115 waiver.

Florida fails to lay out any evaluation plan.
In its application, Florida states that the current evaluation design is sufficient to analyze the changes under this program and does not address the issue further.

It is unlikely that current questions are sufficient to address a change as significant as eliminating retroactive coverage. And even if they are, a more serious discussion of program evaluation, with the state demonstrating why it believes that the current questions are adequate, is warranted before this request is approved.

Furthermore, there is no indication that the state will make any effort to evaluate the impact of this policy change on providers. The fiscal health of safety-net providers is critical to Medicaid's ability to serve enrollees. Therefore, evaluating the impact of a policy will invariably increase

---

[6] Sarah Rosenbaum, et al., "State 1115 Proposals to Reduce Medicaid Eligibility: Assessing Their Scope and Projected Impact," Commonwealth Fund, January 11, 2018 online at http://www.commonwealthfund.org/publications/blog/2018/jan/state-1115-proposals-to-reduce-medicaid-eligibility.

uncompensated care for those providers—such as eliminating retroactive coverage—must be an integral part of program evaluation.

The state's approach to evaluation is nothing short of cavalier. The Secretary must require more. Approval with such scant attention to the evaluation process would be inconsistent with the requirements of Section 1115. As recently as January of this year, the Government Accountability Office issued a report on inadequate evaluations in 1115 waivers.[7] It is incumbent upon HHS to give some credence to GAO's findings, rather than approve waivers that all but ignore evaluation entirely.

For all of the reasons outlined above, Florida's request fails to meet the requirements of section 1115. Therefore, we respectfully urge the Secretary to deny the state's request to eliminate retroactive eligibility.

Thank you for your consideration of our comments.

Sincerely,

Dee Mahan
Director, Medicaid Initiatives

Via email to:
Honorable Alex Azar
Secretary
Department of Health and Human Services
Secretary@HHS.gov

cc: Ms. Seema Verma
Administrator
Centers for Medicare
& Medicaid Services
Seema.Verma@cms.hhs.gov

[7] US Government Accountability Office, *Medicaid Demonstrations: Evaluations Yielded Limited Results, Underscoring Need for Changes to Federal Policies and Procedures* (Washington, DC: US GAO, January 19, 2018). Available online at: https://www.gao.gov/products/GAO-18-220