



# FLORIDA POLICY INSTITUTE

April 2, 2018

Justin Senior, Secretary  
Agency for Health Care Administration  
Bureau of Medicaid Policy  
2727 Mahan Dr., MS #20  
Tallahassee, FL 32308  
FLMedicaidWaivers@ahca.myflorida.com

Re: Proposed Amendment to Florida's Medicaid 1115 MMA Waiver (Project Number 11-W-00206/4)

Dear Secretary Senior:

This comment letter is submitted on behalf of the Florida Policy Institute. The Florida Policy Institute is an independent, nonpartisan and nonprofit organization dedicated to promoting widespread prosperity and advancing fiscal policies that expand economic opportunity for all Floridians.

We are deeply concerned about the state's § 1115 waiver amendment proposal to eliminate retroactive Medicaid eligibility (RME) for thousands of Floridians, primarily seniors and adults with disabilities.

Also, while we support the proposal to broaden the permissible use of LIP dollars for additional providers and services, such as mental health and substance abuse treatment, it's fiscally irresponsible for the state to simultaneously pass up billions more by rejecting Medicaid expansion.

As you evaluate this proposal we ask that you consider the following:

**1. The proposal contravenes the objectives of the Medicaid Act and fails to meet § 1115 demonstration criteria.**

The Secretary of the U.S. Department of Health and Human Services has limited authority under a § 1115 waiver to test innovative, pilot or demonstration proposals. A key requirement is that the proposal promote the objective of the Medicaid Act, which is to provide health insurance coverage to low income people. Yet, this proposal does exactly the opposite. It takes away coverage. AHCA estimates that 39,000 Floridians will be adversely affected.

When Congress enacted the RME law in 1972, the stated purpose was 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.”

The same reasons exist today. Florida’s Medicaid eligibility criteria are complicated and not readily accessible to the public. There are over 40 categories of eligibility and hundreds of pages of related policies. Many people don’t know they are currently Medicaid eligible or the circumstances when they would become eligible.

For example, most low-income Florida adults (18-64, those in the coverage gap) do not qualify for Medicaid because the state has not expanded its Medicaid program. So currently, there are extremely low financial eligibility limits and other requirements which must be met, such as having a disability.

Suddenly, some of those healthy adults may qualify because of an unpredictable catastrophic medical event. But as a “healthy adult” they would be ineligible. Purchase of private insurance prior to their illness would be unaffordable, especially for the thousands of Floridians caught in the coverage gap who cannot qualify for premium subsidies on the ACA marketplace. Similarly, if a senior has a fall and then needs nursing home care, they would only qualify for Medicaid at that point in time. Prior to the fall, their application would be denied as not meeting medical eligibility criteria.

Moreover, once someone learns of the availability of Medicaid, navigating the application process is extremely complex and time-consuming. This responsibility often falls to a family member whose immediate attention is ensuring that their loved one’s medical condition is stabilized before figuring out how to pay for it. It can take a significant amount of time for a patient to complete an application. For instance, it may require submission of five years of bank records, a particularly challenging task for someone who may have Alzheimer’s disease or other cognitive disorders. In the meantime, large medical bills may accrue, exposing families to enormous medical debt and bankruptcy.

The state’s sole stated purpose for eliminating RME “is to enhance fiscal predictability.” (Public Notice Document, p. 6). No doubt, at least in the short-term, eliminating coverage for thousands of Floridians will predictably reduce state Medicaid costs. ***But extending that logic, Florida could justify any proposed elimination or reduction of Medicaid coverage.***

Further, this proposal will end up increasing fiscal unpredictability for “front-line first-responder providers” like hospitals. They will face even greater uncompensated care burdens, which already total up to [\\$2.4 billion](#) annually. Eliminating RME just increases this deficit. The [Florida Chamber](#) estimates that insured Floridians are already paying about an extra \$2,000 for every hospital stay to cover the cost of the uninsured.

## **2. The proposal disproportionately hurts persons with disabilities**

At the eleventh hour of session the Florida Legislature excluded pregnant women and children from elimination of RME but retained this cut for non-pregnant adults. There was no stated rationale for the way the Legislature drew these lines. Notably, the Medicaid savings projections were not reduced when pregnant children and adults were carved out, so apparently cost was not a factor in their decision-making.

But this arbitrary line drawing will disproportionately hurt people with disabilities, including nursing home patients, and those hit by catastrophic illnesses or medical crises like cancer, a stroke or a car accident. Despite their poverty, they cannot qualify for regular Medicaid until their health seriously deteriorates. Floridians needing nursing home care already face extraordinary difficulties finding a provider that will accept Medicaid and they will undoubtedly face even more obstacles if RME is eliminated. The RME proposal would take away safety net coverage at precisely the time when it is needed the most by this extremely vulnerable group of Floridians.

## **3. The proposal makes no exceptions for dual eligibles who qualify for the SLMB and QI-1 Programs.**

Low income Medicare beneficiaries in Florida with income between 101 and 135 percent of the federal poverty level can qualify for the Specified Low-Income Medicare Beneficiary (SLMB) or Qualified Individual-1 (QI-1) Medicare Savings Programs (MSPs). These programs pay Medicare part B monthly premiums. (The standard monthly Part B premium for 2018 is \$134). Beneficiaries can also qualify for three months retroactive coverage. The federal government pays 100 percent of the cost for QI-1 eligibles and the regular state match percent applies to SLMBs.

[Lack of awareness of these programs and burdensome enrollment processes](#) have delayed many eligible Floridians from timely accessing these benefits. Eliminating retroactive coverage means taking away up to \$402 from each low-income Medicare beneficiary who qualifies for SLMB or QI-1 but did not apply concurrent with the month of their initial Medicare enrollment. Notably, the Medicare enrollment process is separate from the process for enrolling in these MSPs.

There is nothing in Florida's proposal which carves out these groups. In fact, they are carved in through the state's broad designation of "non-pregnant adults" as the targeted population. (Public Notice Document, p.6)

Yet, the state's rationale for this proposal, "to enhance fiscal predictability" makes absolutely no sense for this group of beneficiaries. For QI-1s, there are no state costs- they are borne entirely by the federal government. For SLMBs, the costs of retroactive eligibility for this group are predictable. They are a flat premium of no more than \$402 for three months of eligibility.

## **4. The proposal ignores 1115 evaluation requirements for the RME proposal.**

Congress has specified that, "[s]tates can apply to HHS for a waiver of existing law to test a unique approach to the delivery and financing of services to Medicaid beneficiaries ... **contingent upon**

***development of a detailed research methodology and comprehensive evaluation for the demonstration.”*** H. R. Rep. No. 3982, pt. 2 at 307-08 (1981).

Florida’s proposal is completely silent on evaluation of the RME proposal. (Public Notice Document, p.7). This just reinforces the true nature of the proposal: it is solely designed to take away coverage. There is absolutely nothing innovative or experimental about it.

**4. The proposal to tap into \$25.7 million of LIP funding is just a fraction of the additional state dollars that would be available to fund mental health and other services if the state expanded Medicaid.**

[Florida could save hundreds of millions of dollars](#) if it opts to its expand coverage through the Medicaid program. Just on mental health /substance abuse disorder services- due to the enhanced federal match (90 percent vs. 61 percent under LIP)- Florida could save \$250 million. These are additional dollars that could be used to significantly expand access to life-saving services for thousands of Floridians.

While we support broadening the parameters for use of LIP funding, especially since this fiscal year Florida left unspent more than half of the \$1.5 billion, failing to tap into billions more through Medicaid expansion defies logic. It also denies coverage to over 500,000 Floridians, many in desperate need of mental health and substance abuse treatment services.

## **Conclusion**

We believe that the public notice document does not include sufficient information to provide meaningful public comment and respectfully request that AHCA revise its notice to:

- identify the specific Medicaid coverage groups included in or carved out from the RME waiver request; and
- describe the hypothesis and evaluation parameters for the RME waiver request.

After the public notice document is supplemented we request that the Agency initiate another 30-day public comment period.

Thank you for the opportunity to provide these comments and please contact us if you need additional information.

Sincerely,

/s/ Anne Swerlick

Anne Swerlick  
Health Policy Analyst & Attorney