

Congress of the United States
Washington, DC 20515

April 25, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Daniel Tsai
The Deputy Administrator and Director
Center for Medicaid and CHIP Services
200 Independence Avenue SW
Washington, DC 20201

RE: Florida's Section 1115 Research and Demonstration Waiver Request for Florida KidCare Eligibility Extension

Dear Administrator Brooks-LaSure and Deputy Administrator Tsai:

As members of the Florida congressional delegation, we write with deep concern about the premium penalties in the state's proposed five-year Section 1115 waiver for Florida's Children's Health Insurance Program (CHIP), known as Florida KidCare. While the Florida Legislature voted to expand Florida KidCare eligibility to children with family incomes up to 300 percent of the federal poverty level (FPL), we urge you not to approve the State's requested punitive premium structure. Florida's costly barrier to coverage runs counter to Congressional intent. Congress clearly intended that 12-month continuous eligibility be effectuated without any barriers or roadblocks so that children would receive care and coverage under CHIP.

In the Consolidated Appropriations Act, 2023 (CAA), Congress enacted legislation that definitely requires state Medicaid and CHIP programs to provide 12 months of continuous eligibility for children under the age of 19.¹ This protection went into effect on January 1, 2024 with explicit directives for states to keep children continuously enrolled in Medicaid and CHIP for one year with two exceptions: the child reaches age 19 or the child ceases to be a resident of that particular state. The Centers for Medicare and Medicaid Services (CMS) later released guidance to states outlining three more exceptions to 12 months of continuous eligibility that are critical to protecting program integrity: the child or guardian requests a voluntary termination, the State determines eligibility was erroneously granted, or the child is deceased.² CMS subsequently issued a Frequently Asked Questions document clarifying that there is no exception to continuous eligibility for non-payment of premiums in Medicaid or CHIP—the only exceptions are the five outlined above.³ The FAQ document confirms that states like Florida will continue to have the

¹ Public Law No: 117-328, December 29, 2022, <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf>.

² SHO #23-004, "Section 5112 Requirement for all States to Provide Continuous Eligibility to Children in Medicaid and CHIP under the Consolidated Appropriations Act of 2023," *Center for Medicare and Medicaid Services*, September 29, 2023, <https://www.medicaid.gov/sites/default/files/2023-09/sho23004.pdf>.

³ "Mandatory Continuous Eligibility for Children in Medicaid and CHIP: Frequently Asked Questions," *Center for Medicare and Medicaid Services*, October 27, 2023, <https://www.medicaid.gov/sites/default/files/2023-10/faq102723.pdf>.

option to institute an enrollment fee in CHIP and require payment of the first month's premium prior to enrollment.

While we are pleased that the State of Florida enacted legislation to expand KidCare coverage to more children up to 300% of the federal poverty threshold, the State is creating barriers to care that appear unlawful. The waiver estimates that the State expects to enroll over 14,500 currently uninsured children between 200 and 300% of the FPL in the expanded KidCare in the first year, and nearly 165,000 additional children by the end of the five-year demonstration period. Yet the waiver request also proposes new monthly premiums in six income-based tiers, ranging from \$17 to \$195 per month per family, with automatic increases of three percent each year. Unfortunately, the waiver submission strongly suggests that Florida intends to continue its practice of wrongfully disenrolling children for failure to pay the monthly premiums, which runs counter to the new continuous eligibility protection.⁴

Additionally, we believe the suggested premium structure in Florida's Section 1115 waiver request is likely to be a significant financial barrier for children in lower income working families. Florida is one of a handful of states that charges premiums to children at income levels below 150 percent of the FPL, and State data has shown that thousands of children lost coverage monthly or were determined ineligible for initial enrollment due to non-payment of premiums in KidCare in the past.⁵ The proposed six-tier system will add to the administrative burden faced by state employees and to confusion by families, and the proposed annual three percent increase is likely to exacerbate these issues.

Concurrently, the State has filed a lawsuit in federal court against CMS, claiming that states should be allowed to terminate children from their CHIP coverage for nonpayment of premiums despite the CAA's new protection.⁶ We have recently learned that the state has disenrolled 22,576 current KidCare enrollees since January 1, 2024, in contravention to federal law.⁷ Florida is the only state in the country that we are aware of that is brazenly disregarding the new federal protection for children.

This is not happening in a vacuum. Since the Medicaid unwinding began last spring, the number of children enrolled in Medicaid has declined by over 460,000, a 17.1% decline in covered children.⁸ It is unclear what has happened to the coverage of the vast majority of these children, but the net enrollment in Florida KidCare has only been 49,000, a large discrepancy which bears

⁴ See p. 9 of Florida's Section 1115 application which states "Total projected enrollment in KidCare, *including disenrollment for failure to pay the monthly premium*, was utilized to calculate the total costs for the demonstration." Emphasis added. <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/fl-chip-elig-03202024-pa.pdf>

⁵ Sheila Hoag and Victoria Peebles, "Congressionally Mandated Evaluation of the CHIP: Florida Case Study," *Mathematica Policy Research*, September 21, 2012, <https://www.mathematica.org/publications/florida-case-study-congressionally-mandated-evaluation-of-the-childrens-health-insurance-program>.

⁶ *State of Fla. v. Centers for Medicare & Medicaid Servs.*, Case No. 8:24-cv-317 (M.D. Fla) (filed Feb. 1, 2024)

⁷ Christine Jordan Sexton, "More than 22K children dropped from Florida KidCare in 2024 as state challenges federal eligibility protections," *Florida Politics*, April 17, 2024, <https://floridapolitics.com/archives/670068-more-than-22k-children-dropped-from-florida-kidcare-in-2024-as-state-challenges-federal-eligibility-protections/>.

⁸ "How Many Children are Losing Medicaid?" *Georgetown University Center for Children and Families*, accessed April 18, 2024, <https://ccf.georgetown.edu/2023/09/27/how-many-children-are-losing-medicaid/>.

review.⁹ We also know that Florida has a high number of procedural disenrollments: of the 1.35 million total Floridians who have lost their coverage during the unwinding, 70% were for procedural reasons, not because the individual was no longer eligible for the program.¹⁰ Research from the Department of Health and Human Services (HHS) indicates that ¾ of children expected to lose Medicaid during the unwinding are very likely to remain eligible for Medicaid – a finding which suggests that children who lose Medicaid for procedural reasons are much more likely than adults to become uninsured.¹¹ While the State has not disaggregated the data by age, there are numerous stories of children losing coverage inappropriately, which results in children missing needed care and families risking medical debt.^{12 13} This led to Secretary Becerra sending Governor DeSantis a letter because Florida was among the nine states with the largest number or highest percentage of disenrolled children during the unwinding. The letter from HHS strongly encouraged the state to adopt strategies and waivers to help children to maintain needed access to care, none of which Florida has adopted.

Children have unique health care needs, and access to consistent health coverage is critical for their development and well-being, allowing them to grow into healthy adults. Positive effects of health coverage for children include timely access to care and reductions in mortality, emergency care usage, and avoidable hospitalizations, as well as less chronic disease in adulthood, higher rates of graduation, increased college enrollment, and higher future wages. Medicaid is a particularly strong program for children, with no waiting or special enrollment periods, entitlement to services, and coverage of all medically necessary services.¹⁴ Research has shown that children who are disenrolled for all or part of a year are more likely to have fair or poor health care status compared to children with continuous coverage.¹⁵

Not only does continuous eligibility for children improve their short- and long-term health outcomes, it reduces financial barriers to care, promotes health equity, and is cost-effective for families and states. Reduced churn greatly lowers the administrative burden on states, who are no

⁹ Joe Mario Pedersen, “Thousands of Florida kids lost Medicaid, now some have no coverage,” *WUSF Public Media*, March 25, 2024, <https://www.wusf.org/politics-issues/2024-03-25/thousands-of-florida-kids-lost-medicaid-now-some-have-no-coverage>.

¹⁰ “What is happening with Medicaid renewals in each state?” *Georgetown University Center for Children and Families*, accessed April 18, 2024, <https://ccf.georgetown.edu/2023/07/14/whats-happening-with-medicaid-renewals/>.

¹¹ “Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches,” *Assistant Secretary for Planning and Evaluation*, August 19, 2022, <https://aspe.hhs.gov/sites/default/files/documents/dc73e82abf7fc26b6a8e5cc52ae42d48/aspe-end-mcaid-continuous-coverage.pdf>.

¹² “Medicaid: The Lived Experience: Unwinding the Continuous Coverage Requirement,” *Florida Health Justice Project*, accessed April 18, 2024, <https://www.floridahealthstories.org/unwinding-continuous-medicaid>.

¹³ Caroline Catherman, “After losing Medicaid, parents of Florida’s sickest kids are in limbo,” *Orlando Sentinel*, April 10, 2024, <https://www.orlandosentinel.com/2024/04/10/after-losing-medicaid-parents-of-floridas-sickest-kids-are-in-limbo/>.

¹⁴ Jennifer D. Kusma, Jean L. Raphael, James M. Perrin, Mark L. Hudak, “Medicaid and CHIP: Optimization to Promote Equity in Child and Young Adult Health,” *Pediatrics* 152, no. 5 (2023), <https://doi.org/10.1542/peds.2023-064088>.

¹⁵ SHO #23-004.

longer tasked with conducting repeated eligibility reviews and re-enrollments.¹⁶ Continuous eligibility also lowers state health care costs by preventing health issues from going undetected and becoming more expensive in the long term. The Congressional Budget Office (CBO) recently analyzed the effects of Medicaid during childhood on the economy and the budget. The experts found that an additional year of health coverage in childhood under a continuous eligibility policy would improve labor outcomes in adulthood, including higher earnings, hours worked, and productivity, which would increase the returns on investment, boost the GDP, and produce positive long-term fiscal effects.¹⁷

Finally, we note that the State’s waiver request includes multiple public comments from the state comment period from individuals who were concerned about imposing premiums, the amounts of the premiums, the tier structure of the premiums, and the applicability of the continuous eligibility protection. It is not clear that the State took any action or responded to the public’s concerns: the only acknowledgement of these issues was the letter “N.”

As members of Florida’s congressional delegation, we are hopeful that the State will follow through with the proposed expansion of KidCare – and do so in a way that follows the law – allowing up to 165,000 more of our youngest neighbors to have access to high-quality coverage. Florida children should not experience harmful and unlawful gaps in their coverage, be exposed to unaffordable premiums and be treated more harshly than children from other states.

Sincerely,



Kathy Castor
MEMBER OF CONGRESS



Sheila Cherfilus-McCormick
MEMBER OF CONGRESS



Darren Soto
MEMBER OF CONGRESS



Frederica S. Wilson
MEMBER OF CONGRESS

¹⁶ Kelly Whitener and Matthew Snider, “Advancing Health Equity for Children and Adults with a Critical Tool: Medicaid and CHIP Continuous Coverage,” *UnidosUS and Georgetown University Center for Children and Families*, October 2021, <https://ccf.georgetown.edu/wp-content/uploads/2021/10/continuity-of-coverage-final.pdf>.

¹⁷ Congressional Budget Office, [Exploring the Effects of Medicaid During Childhood on the Economy and the Budget](#), 2023.

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