FLORIDA CENTER FOR FISCAL AND ECONOMIC POLICY

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Seeking Flexibility in Florida Medicaid: Already Bends, No Need to Break

Republican governors, including Florida's Rick Scott, have been in the news of late asking Congress for flexibility in administering state Medicaid programs.[1] For their part, Florida House and Senate leaders have been demanding flexibility from federal Medicaid rules they consider excessively burdensome since the last legislative session.[2] This leads to the question: To which rules are they referring?

For one, as federal Department of Health and Human Services (HHS) Secretary Kathleen Sebelius noted in a recent memo to governors, states already "have substantial flexibility to design benefits, service delivery systems, and payment strategies."[3] Florida in particular relies heavily on that flexibility, operating its Medicaid program under a wide array of federal waivers. Chief among them is Florida's "section 1115" research and demonstration waiver. That waiver authorized one of the most extensive Medicaid managed care experiments in the nation: so-called Medicaid Reform. Waivers from no less than 17 different federal statutes and rules were needed to pave the way for the Reform Pilot, which the Legislature currently plans to extend and expand.[4]

Florida in fact has all of the flexibility necessary to meet its Medicaid-related challenges, both unique and common. Rather, what Florida lacks – for good reason – is the authority to evade the minimum requirements of the federal-state Medicaid partnership, at least without jeopardizing access to the majority of the program's funding that federal government provides through that partnership.

Perhaps the most important example of the misrepresentation of the need for flexibility has been states' insistence that they desperately need relief from the "maintenance of effort" (MOE) provisions of the Patient Protection and Affordable Care Act (PPACA).[5] The MOE requirements, however, simply provide a stable "low bar" to protect vulnerable Medicaid recipients by preventing states from tightening or restricting eligibility until federally funded coverage expansions come on-line.

In short, a demand for flexibility to bypass MOE requirements amounts to nothing more than a euphemism for a demand for authority to remove or block recipients from Medicaid coverage. Further, such demands persist despite the lingering recession that has made Medicaid coverage more of an indispensable safety net than ever.[6] Relaxation of coverage-stabilizing MOE provisions would be especially harmful in Florida, where eligibility criteria are already strict. Fewer than 6 percent of Florida Medicaid recipients qualify based on eligibility criteria that are more generous than the bare minimum

federal standard.[7] Nevertheless, the legislature hopes to capitalize on the reality that potential support for undermining MOE will likely peak this year, because the Medicaid program is "counter-cyclical" in nature (i.e., enrollment is highest at the same time that revenue is lowest).

This helps explain why Medicaid managed care expansion proposals currently moving through the legislature, particularly the Senate bill (SB 1972)[8], essentially ignore MOE requirements. For one thing, SB 1972 would not only allow ready elimination of coverage for the above-mentioned "optional" 6 percent, in some cases even without the approval of the full Legislature.[9] For another, it would tighten eligibility criteria overall,[10] ultimately eliminating Medicaid coverage for a number of recipients who would be eligible in every other state in the U.S.

Such a degree of flexibility is well beyond what can be approved at a federal agency level, even with the broadest of section 1115 waivers.[11] (Comparisons with Arizona, which received tacit authorization from HHS to eliminate eligibility for some Medicaid recipients, are misplaced. The key distinction is that the affected Arizonans were not traditionally eligible under federal law until Arizona took direct action to make them so. They became eligible via an optional coverage *expansion* waiver that Arizona could simply allow to expire.[12]) Consequently, HHS cannot approve Florida's request for such significant eligibility-purging powers. Only Congress has that authority, and it is authority that should not be invoked.

Medicaid can already *bend* quite well, but undermining essential protections like the MOE provisions in PPACA would *break* it. The threat is especially dire for vulnerable Floridians who depend on Medicaid. Florida is already a front-runner in the Medicaid "race to the bottom". Now leaders are pushing to jettison the bottom altogether.[13]

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Endnotes

1 See, e.g., Republican Governors Association, "GOP Governors Ask Feds to Ease Health Care Mandates"
2 See, e.g., Florida Legislature, Senate Memorial 4-A (2010), adopted December 2010
3 Kathleen Sebelius, U.S. Department of Health and Human Services, Letter to state governors outlining state flexibility and support available for Medicaid, February 2011
4 Centers for Medicare and Medicaid Services (CMS), Waiver Authorities for Florida's Medicaid Reform Section 1115 Demonstration, October 2005
5 Families USA, Maintenance of Effort Requirements Under Health Reform, March 2010
6 See, e.g., the Commonwealth Fund, Help on the Horizon: How the Recession Has Left Millions of Workers Without Health Insurance, and How Health Reform Will Bring Relief, March 2011
7 FCFEP, Out of Options, February 2011, p. 7

[8] See http://www.flsenate.gov/Session/Bill/2011/1972

[9] See section 18 of the bill

[10] See sections 17 and 35 of the bill

[11] Cindy Mann, CMS, Letter to state Medicaid directors regarding maintenance of effort rules, February 2011

[12] Healthwatch, "Sebelius: No further study needed for Arizona Medicaid cuts", March 2011

[13] SB 1972 allows elimination of "optional" benefits, termination of coverage for "optional" coverage groups, cuts in provider reimbursement rates and reduction of benefit levels for any recipients who remain eligible. See section 18 of the bill.