

Congress of the United States
Washington, DC 20515

April 25, 2017

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma:

We are writing you to request additional information about the Centers for Medicare & Medicaid Services' (CMS) sudden decision to grant \$1.5 billion to the state of Florida to fund its Low-Income Pool (LIP) in the Medicaid program. CMS has cited significant concerns with the structure and functioning of the Florida LIP in the past. We are deeply concerned with CMS's lack of transparency and documentation around the approval of the additional funds and the absence of a clear plan moving forward to ensure that the statutory objectives of the Medicaid program are met.

Medicaid is one of our nation's most critical programs. Together with the Children's Health Insurance Program (CHIP), Medicaid provides health insurance to over 74 million people. As the Ranking Members of the key Committees in Congress with jurisdiction over the Medicaid program, we are charged with protecting and advancing the statutory objectives of the Medicaid program. Those statutory objectives are clear: Medicaid is a health insurance program that is intended to provide "medical assistance [to eligible individuals] whose income and resources are insufficient to meet the costs of necessary medical services" and "rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care."¹ CMS, in prior extensive communication with the state of Florida, outlined principles under which Florida's LIP could meet the statutory objectives of the Medicaid program. These principles specifically established that:

1) Uncompensated care pool funding should not pay for costs that would be covered in a Medicaid expansion, 2) Medicaid payments should support services provided to Medicaid beneficiaries and low-income uninsured individuals, and 3) provider payment should promote provider participation and access, and should support plans in managing and coordinating care.²

¹ 42 U.S.C. § 1396-1.

² Letter from Vikki Wachino, Director, CMS Center for Medicaid & CHIP Services, HHS, to Justin Senior, Deputy Secretary for Medicaid, Florida Agency for Health Care Administration (June 23, 2015).

However, the approval of this waiver was inconsistent with CMS's own stated principles.

The LIP should not pay for costs covered by Medicaid expansion: CMS stated that, when deciding whether to approve Florida's LIP proposal, it would adhere to the principle that "coverage rather than uncompensated care pools is the best way to secure affordable access to health care for low-income individuals," and that LIP funding "should not pay for costs that would be covered in a Medicaid expansion."³ The LIP was not intended to be used as a health coverage program, but we are concerned that that is exactly what this waiver attempts to do. In fact, CMS's analysis indicated that "the amount of hospital uncompensated care that would not be covered through Medicaid expansion or other coverage" was approximately \$600 million per year.⁴ This means that CMS's waiver to fund \$1.5 billion for uncompensated care through the LIP is nearly \$1 billion more than CMS's own estimate of the costs of uncompensated hospital care that the LIP was intended to address.

LIP payments should support services to beneficiaries: The LIP is intended to reimburse Florida providers that give uncompensated care to residents who are uninsured or underinsured. However, CMS has previously cited concerns with Florida's LIP, including "its lack of transparency, encouragement toward overreliance on supplemental payments, and distribution of funds based on providers' access to local revenue instead of service to Medicaid patients."⁵ CMS also notified Florida that "more fundamental changes" were needed in its LIP proposal to more closely tie payments to services provided to beneficiaries.⁶

LIP payments should promote provider participation and access: CMS has emphasized that provider payment should promote provider participation and access, and should support plans in managing and coordinating care. However, when CMS was considering Florida's proposed changes to its LIP, it noted that the "changes mean that the LIP distributes funds in a way that does not align with providers' role in serving the Medicaid population and financing low-income uncompensated care."⁷

Furthermore, after receiving notification from CMS about the \$1.5 billion waiver, Florida Governor Rick Scott called for spending on infrastructure projects and tourism promotion, which

³ Letter from Vikki Wachino, Acting Director, CMS Center for Medicaid & CHIP Services, HHS, to Justin Senior, Deputy Secretary for Medicaid, Florida Agency for Health Care Administration (April 14, 2015).

⁴ Letter from Vikki Wachino, Director, CMS Center for Medicaid & CHIP Services, HHS, to Justin Senior, Deputy Secretary for Medicaid, Florida Agency for Health Care Administration (May 21, 2015).

⁵ See note 3.

⁶ See note 4.

⁷ *Id.*

the LIP is not authorized to fund.⁸ As you know, the Social Security Act prohibits any federal funds made available to states under the Medicaid program from being spent on any “item or service not covered under a State [Medicaid] plan,” including infrastructure projects.⁹ It is imperative that any funds approved for Florida’s Medicaid program be used to serve its vulnerable patients, and that any unrelated state initiatives be funded with separate state funds.

In light of these concerns, we request that you provide the Committee with the following information:

1. Please provide documentation for CMS’s waiver to provide \$1.5 billion in funding for the Florida LIP, including documentation of when the decision was made to grant the waiver.
2. What was CMS’s rationale for granting this waiver?
 - a. Please describe how the process for approving this waiver adhered to the principles laid out in CMS’s letters to Justin Senior, Deputy Secretary for Medicaid, Florida Agency for Health Care Administration, dated April 14, 2015, and May 21, 2015.
3. How will Florida distribute the LIP funding? What oversight will CMS conduct to ensure Florida’s distribution of LIP funds is in keeping with CMS’s own principles regarding LIPs?
4. How will CMS ensure that Florida spends LIP funding only on items or services authorized by federal law?
5. What evaluations or audits will the state of Florida be subject to regarding the operation of its LIP and the disbursement of the funds granted under this waiver?
6. How will CMS ensure that the issues it previously identified with the LIP (including lack of transparency, overreliance on supplemental payments, and payments not being based on care provided to Medicaid patients) will not continue with the \$1.5 billion in funds provided under this waiver?
7. Is CMS changing its policy on approving and funding uncompensated care pools? If so, please explain the rationale for doing so and whether such policies will be applied to all states with uncompensated care pools.

⁸ *Gov. Scott’s requests for dike, tourism funding could fall on deaf ears in House*, The Orlando Sentinel (Apr. 18, 2017).

⁹ 42 U.S.C. § 1396b(i)(17).

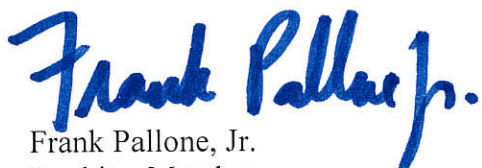
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Please provide your response to these questions as soon as possible, but no later than May 10, 2017.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone Jr." in a cursive style.

Frank Pallone, Jr.

Ranking Member

House Energy & Commerce Committee

A handwritten signature in blue ink that reads "Ron Wyden" in a cursive style.

Ron Wyden

Ranking Member

Senate Finance Committee