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May 12, 2023

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Subject: Arizona Former Foster Youth Annual Automatic Renewal Section 1115 Amendment Request

Dear Secretary Becerra and Administrator Brooks-LaSure:

Thank you for the opportunity to comment on Arizona's section 1115 waiver amendment request. First Focus on Children is a bipartisan advocacy organization that prioritizes children and families in federal budget and policy decisions. We advocate for the over 41 million children covered by Medicaid and the Children's Health Insurance Program (CHIP) to ensure they have access to timely, affordable, and high-quality care. A critical group that Medicaid helps to provide coverage for is former foster youth. These youth have higher physical and behavioral health needs than their peers, often due to trauma they have suffered as a result of abuse and neglect. It is important that this population have stable, comprehensive health care coverage. Medicaid plays a vital role in providing comprehensive coverage, especially for former foster youth transitioning into adulthood, reducing health and social disparities. For these reasons, we write in general support of Arizona's proposal to automatically renew Medicaid coverage for foster youth who have aged out of the system in the state.

While we support the overall intent of the waiver, we would ask, to the extent possible, that the Centers for Medicare & Medicaid Services (CMS) encourage Arizona to extend its proposal further to apply to any foster youth, not just those who aged out of Arizona's system. We would also request that

CMS develop a section 1115 template to streamline these type of state requests to improve access to Medicaid for former foster youth.

In Fiscal Year 2021, family courts across the country ordered 206,812 children and youth to be placed in foster care because there was sufficient evidence to conclude that these children had experienced abuse or neglect and that they could not safely remain at home.¹ In total, 606,031 children experienced at least one day in the government’s care and custody in FY2021.² The most common reasons for children entering foster care were neglect, drug abuse (parent), caretaker inability to cope, physical abuse, and inadequate housing. The expressed purpose of foster care is to provide the environment and services that children and youth need to develop and heal while their parents ameliorate the reason that the children entered foster care. Once parents complete this task the children are supposed to reunify with their parents. Recent statistics indicate that 47% of the 214,971 children who exited foster care were reunited with their parents or previous caregivers in FY 2021.³ However, over each of the past five years an average of 19,475 young people have “aged out” of foster care, meaning that they emancipated from foster care without establishing a permanent legal relationship with an adult who can help them transition into adulthood.⁴

An important provision to come out of the Affordable Care Act (ACA) was to allow young adults to stay on their parent’s health plan until age 26. This provision alone, however, would’ve left out former foster youth. Unlike other young adults, youth transitioning out of foster care, do not often have family that they can fall back on to help them transition to adulthood and independence. Thankfully, another provision was added to the ACA extending Medicaid to former foster youth, allowing them to retain health coverage through Medicaid until age 26. Unfortunately, several technical errors have meant that the original ACA provision has not worked as intended.

Along with other provisions in the ACA, the provision extending Medicaid coverage to former foster youth went into effect in 2014. However, a technical issue with the law led to the interpretation that states were only required to extend Medicaid coverage to foster youth until age 26 for those who aged out within their respective state. This technical error was corrected in the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act. The initial implementation of this SUPPORT Act provision was delayed until January 1, 2023. Unfortunately, this “fix” is also problematic in that it means full phase in of the original intent of the ACA provision covering former foster youth will not be achieved until 2030 because the change only applies to former foster youth who turned 18 on or after January 1st of this year. The phased-in implementation will only create more missed opportunities to provide health care coverage to former foster youth; a group that has higher physical and mental health care needs than their peers.

Children in foster care have an unmatched prevalence of chronic conditions.⁵ About 50% of children in foster care have chronic physical problems, such as asthma, anemia, visual or hearing loss,

¹ Children’s Bureau, Department of Health and Human Services, “The AFCARS Report #29” (June 2022), *available at* <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Bilaver LA, Havlicek J, Davis MM, “Prevalence of Special Health Care Needs Among Foster Youth in a Nationally Representative Survey,” *JAMA Pediatr.* 174(7): 727-729 (July 2020), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7215624>.

and neurological disorders.⁶ Research estimates that 31.8% of the foster care population are children and youth with disabilities.⁷ Additionally, one study estimated that 44% of children in foster care have special health care needs.⁸ Foster youth also have a higher likelihood of multiple Adverse Childhood Experiences (ACEs). Experiencing multiple ACEs is associated with increased risk of negative health outcomes such as diabetes, heart disease, and substance use disorders. Foster youth are also at greater risk of behavioral health issues, homelessness, and involvement in the justice system. All of this makes Medicaid incredibly important to treat the physical and mental health needs of former foster youth.

We are grateful that CMS released guidance in December 2022, which referred to the opportunity for states to seek approval of a section 1115 demonstration to: (1) cover former foster youth who aged out of foster care in another state; and (2) to enroll former foster youth without screening for eligibility under other mandatory groups, even if the individual turned 18 before January 1, 2023. This guidance is a good step forward to encourage states to submit waivers that improve access to Medicaid coverage for former foster youth.

Arizona's waiver should be approved. However, we ask that CMS encourage the state to extend the provision to all former foster youth, rather than only those who aged out of Arizona's foster care system. With implementation of the former foster youth fix from the SUPPORT Act not being fully phased-in until 2030, limiting this proposal to only those who aged out of the Arizona system is inequitable, denying coverage to a segment of the former foster youth population. CMS should do all that it can to ensure that administrative barriers do not stand in the way of access to coverage and care for the former foster youth population.

We would also strongly encourage CMS to develop a waiver template aligned with the December 2022 guidance and federal law that would help streamline and expedite the process for states to automatically renew coverage for former foster youth regardless of the state in which they have aged out.

Thank you again for the opportunity to submit these comments. If you have any questions, please contact me at 202-674-2446 or at brucel@firstfocus.org

Sincerely,



Bruce Lesley
President

⁶ American Academy of Pediatrics, "Physical Health Needs of Children in Foster Care." (July 2021), <https://www.aap.org/en/patient-care/foster-care/physical-health-needs-of-children-in-foster-care/>.

⁷ Slayter, Elpseth, "Youth with disabilities in the United States Child Welfare System," *Children and Youth Services Review*, 64, 155-165 (2016), available at <https://doi.org/10.1016/j.childyouth.2016.03.012>.

⁸ Bilaver, *supra* note 5.