MARKET PRINCIPLES: THE RIGHT PRESCRIPTION FOR MEDICAID

Governor Jeb Bush

For thirty-five years, Florida's most vulnerable families have relied on the state's Medicaid program for critical health care services. In the 2004-05 state fiscal year (SFY), Florida spent more than $14.9 billion[1] to provide these services to 2.093 million residents.[2] In SFY 2005-06, despite aggressive efforts to curb growth by fighting fraud, streamlining preferred drug lists, and expanding use of managed care, we will spend over $15.3 billion on these same services.[3] In FY 2004-05, Medicaid with the federal match accounted for over 25% of our entire state budget, to serve the same people, with no expansion of services and no real growth in the Medicaid population receiving benefits.[4]

Since 1999, Florida's tax revenue has grown an average of 4.9% each year.[5] It is a robust rate of growth that is completely outstripped by Medicaid

1. *See* DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., FLORIDA MEDICAID: PROPOSED FRAMEWORK FOR MODERNIZATION 1 (2005), *available at* http://ahca.myflorida.com/Medicaid/Research/pdf/proposed_framework_for_modernization_031105.pdf [hereinafter PROPOSED FRAMEWORK] (citing Medicaid Services' Budget Forecasting System Reports (noting that the figure is from "FY 2004—05 Social Services Estimating Conference 10/24/04. Includes supplemental funding.")); Conference Report on H.B. 1835, General Appropriations Act FY 2004-2005, § 3, 2004 Leg., Reg. Sess. (Fla. 2004), *available at* http://www.myfloridahouse.gov/filestores/adhoc/appropriations/gaa/2004/appbills/confrept.pdf.

2. DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., A SNAPSHOT OF FLORIDA MEDICAID, GROWTH IN AVERAGE MEDICAID MONTHLY CASELOAD (IN MILLIONS) 2 (2005), *available at* http://ahca.myflorida.com/Medicaid/deputy_secretary/recent_presentations/fl_medicaid_Snapshot_041805.pdf [hereinafter SNAPSHOT] (citing Medicaid Services Eligibility Subsystem Reports, Medicaid Caseload Estimating Conference (2005)).

3. PROPOSED FRAMEWORK, *supra* note 1, at 1 (citing Medicaid Services' Budget Forecasting System Reports (noting that the figure is from "FY 2005-06 Social Services Estimating Conference 10/24/04. Adjusted to remove supplemental funding. 2005-06 does not include Medically Needy restoration, pregnant women restoration, or adult dental restoration.")).

4. DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., FLORIDA MEDICAID: A CASE FOR MODERNIZATION 11 (2004), *available at* http://ahca.myflorida.com/Medicaid/deputy_secretary/recent_presentations/fl_medicaid_a_case_for_modernization_112304.pdf (citing Medicaid Services' Budget Forecasting System Reports (stating "FY 2004-05 General Appropriations Act adjusted for vetoes.")).

5. FLORIDA REVENUE ESTIMATING CONFERENCE, REVENUE ANALYSIS FY 1970-71 THROUGH FY 2014-15, Fall 2005, *available at* http://edr.state.fl.us/reports/book2/book2.pdf. There is no particular page where you can find this conclusion; rather, it is the primary source for the data. The Revenue Analysis may be used with calculations to produce these

costs, which rose an average of 13% each year during the same period.[6] Since 1999, our state revenues have grown 27%.[7] Our Medicaid costs grew 112% in that timeframe.[8] Left unchecked, Florida's Medicaid expenses are expected to account for 59% of the state's budget by 2015.[9]

This growth is not only unsustainable, it creates no corresponding increase in the quality or availability of services for the people who rely on Medicaid for health care. Each year we invest more money in the health of our most vulnerable residents, and each year those residents face fewer health care options, with the same bureaucracy and barriers to access them.

I. DEFINING THE PROBLEM

In March 2004, Florida's Agency for Health Care Administration (AHCA) began asking the public about their experiences with Medicaid and ideas for modernizing the program.[10] Over the next year, AHCA held discussions with a cross-section of providers, advocates, and Medicaid patients.[11] No one is more familiar with the need to fix Medicaid than the people who use it. In addition to the litany of policy and procedure problems identified, we heard story after story of Floridians who have Medicaid coverage, but no access to the health care providers they need.

For example, in rural Gadsden County, only 5% of the children have access to a dentist. In early 2005, dentists from Leon County visited a Gadsden school to provide free dental screenings and were shocked at the rates of decay and

statistics. These calculations were performed by an expert in the Governor's Office of Policy and Budget, who sits on the Revenue Estimating Conference.

6. DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., FLORIDA MEDICAID REFORM: APPLICATION FOR 1115 RESEARCH AND DEMONSTRATION WAIVER (2005), *available at* http://ahca.myflorida.com/Medicaid/medicaid_reform/waiver/pdfs/medicaid_reform_waiver_083005.pdf [hereinafter WAIVER APPLICATION].

7. FLA. REVENUE ESTIMATING CONFERENCE, *supra* note 5. There is no particular page where you can find this conclusion; rather, it is the primary source for the data. The Revenue Analysis may be used with calculations to produce these statistics. These calculations were performed by an expert in the Governor's Office of Policy and Budget, who sits on the Revenue Estimating Conference.

8. JEB BUSH, GOVERNOR OF THE STATE OF FLORIDA, FLORIDA MEDICAID MODERNIZATION PROPOSAL 1 (Jan. 11, 2005), *available at* http://www.fmda.org/bush.pdf [hereinafter MODERNIZATION PROPOSAL].

9. *Id.* This estimate is based on an assumption that the overall state budget will maintain an average growth rate of 4%.

10. The Agency conducted town meeting-style forums across the state in publicly-noticed open meetings throughout the reform process, and continues to do so.

11. The Florida Agency for Health Care Administration, Division of Medicaid, conducted public forums across the state throughout 2004. A schedule of those meetings, handouts, summaries of issues raised by the public, and stakeholder comments may be found at http://ahca.myflorida.com/Medicaid/medicaid_reform/2004meetings.shtml.

infection they found.[12] Statewide, only 16% of children eligible for dental care through Medicaid receive preventive dental services.[13]

Medical specialists are also in short supply for Medicaid patients in Florida. We have heard too many stories of men, women, and children whose only option for care after a serious injury or illness is the local hospital. Others are forced to travel great distances to get the care they need. We learned of a man with a knee injury who drove 135 miles to find an orthopedist who would accept Medicaid patients, and another who spent five hours on a bus to reach a cardiologist who would see him.[14] In a meeting last year, representatives from Orlando hospitals explained that their specialty clinics are inundated with Medicaid patients from other areas of the state.[15]

Florida's Medicaid problems are not limited to money and access to service. The quality of care Medicaid patients receive is also an issue. State and federal laws and rules limit the ability to weed out health professionals who provide substandard care and perpetrate fraud.[16] Medicaid is intended as an entitlement program for the poorest and sickest in our society. It may have also become an entitlement for some unscrupulous providers who prey on the program, and the state has little power to stop the abuse.

The State of Florida was barred from withholding Medicaid payments to a Miami hospital,[17] even though the U.S. Attorney's office is suing the same facility for Medicare fraud.[18] We fought a battle against suspicious pharmacy claims, trying to delay payment until we had time to audit and verify the charges. The judge in that case prohibited the state from reviewing those claims prior to payment.[19]

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12. Editorial, *A Needed Change; Our Position: Jeb Bush's Plan to Reform Medicaid Shouldn't Be Allowed to Die*, ORLANDO SENTINEL, May 2, 2005, at A12.

13. DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., ANNUAL CHILD HEALTH CHECK-UP PARTICIPATION REPORT CMS 416 (2005) (analyzing data from 10/01/03 through 09/30/04) (on file at the Florida Agency for Health Care Administration).

14. Editorial, *supra* note 12.

15. *Id.*

16. *See* 42 U.S.C. § 1396 (2005); 42 C.F.R. § 430-456 (2005).

17. Michel et al. v. Agency for Health Care Admin., No. 04-1714-1717 (Fla. 2d Cir. Ct. July 23, 2004) (Order granting plaintiffs' emergency motions for temporary restraining orders and preliminary injunctive relief), *voluntarily dismissed*, No. 04-CA-1714-1717 (Fla. 2d Cir. Ct. Nov. 2, 2004).

18. United States v. Michel et al., No. 04-CV-21579, at 40-52 (S.D. Fla. June 29, 2004).

19. Seratech, Inc. v. Medows, No. 2003 CA 00269 (Fla. Cir. Ct. Jan. 9, 2004) (final declaratory judgment and writ of mandamus finding statute unconstitutional and enjoining the agency from further prepayment review), *superseded by statute*, 2004 Fla. Laws 2381-2382, *appeal dismissed as moot*, No. 1D04-423 (Fla. Dist. Ct. App. Jan. 4, 2005). A second lawsuit was later filed by a different provider challenging the amended prepayment review statute. Petition for Expedited Writ of Mandamus and Complaint for Declaratory Judgment, Pharmanet, Inc. v. Levine, No. 04-1786 (Fla. Cir. Ct. July 21, 2004).

In the private sector, when a health care provider is charged with providing poor care or billing improperly, the practitioner is usually dropped by any hospitals and health plans with which he or she has been affiliated. Hospitals and health plans do not want the liability or the reputation that comes with a doctor providing substandard or unethical care. Under federal Medicaid law, state Medicaid programs must accept any willing, qualified provider.[20] The state is permitted to set reasonable standards for those providers,[21] however, Florida's Medicaid program must set such standards via a cumbersome administrative rulemaking process, subject to legal challenge.[22] Under Florida's current Medicaid program, it can be extremely difficult to decline to contract with providers or to remove them from the system, because they believe they are entitled to their Medicaid contracts just as Medicaid recipients are entitled to Medicaid services. If we act to terminate providers' contracts "for cause," we face lengthy contract or administrative lawsuits, during which we must continue to pay the provider. If we terminate "without cause," under the terms of the contract we may still find ourselves in the courts, both civil and public opinion, as the provider fights for due process to which only recipients are entitled.[23]

Today's Medicaid serves no one as well as it should. Whether we measure effectiveness by cost or result, it is clear the program designed in 1970 simply does not work efficiently in 2005.

Timid reform is not the answer. Florida's Medicaid program has been reformed many times since its inception in 1970. As a result, we have seventeen eligibility categories based on age, gender, income, and medical conditions.[24] Our benefit package includes fifty types of services—offered to everyone in the program, regardless of need.[25] Some Medicaid patients find this standard benefit menu offers coverage for everything except the service they most need. They wind up in our emergency rooms because hospitalization

20. 42 U.S.C. § 1396a(23) (2005).

21. 42 C.F.R. § 431.51(c) (2005).

22. FLA. STAT. ANN. § 120.54 (2005).

23. *See* Response to Order to Show Cause, Yema Home Health Care, Inc. v. Agency for Health Care Admin., No. 1D05-3376 (Fla. Dist. Ct. App. Aug. 2005) (challenging Medicaid program termination of provider contract pursuant to "without cause" term, arguing the provider is entitled to review of the contract action under the Florida Administrative Procedures Act); Unopposed Motion to Consolidate Appeals at 2, Universal RX Corp. v. Agency for Health Care Admin., Nos. 2D05-2942, 2D05-2300 (Fla. Dist. Ct. App. June 2005) (challenging Medicaid program decision not to enter into provider contract, arguing the provider is entitled to review of the decision under the Florida Administrative Procedures Act), *voluntarily dismissed*, Nos. 2D05-2942, 2D05-2300 (Fla. Dist. Ct. App. Aug. 18, 2005).

24. SNAPSHOT, *supra* note 2, at 1 ("Florida Medicaid Eligibility Coverages FY 2003-04") (citing Social Services Estimating Conference for Medicaid Caseload (2005)).

25. *Id.* at 1 ("Florida Medicaid Mandatory Services" & "Florida Medicaid Optional Services").

is covered, but routine check-ups and preventive treatment to keep them out of medical crisis are not. The rigid, outdated design of the current Medicaid program creates barriers to adding home and community-based programs and newer, technologically advanced services that were not originally included because they did not previously exist.

Over the years, to add flexibility, we have created twenty-three separate waivers, at least one of which contains more than twenty different programs.[26] Some of these "pilot" programs have been running for ten years or more.[27] Today there are 224 separate state initiatives directing AHCA to develop and implement a broad range of vendor-driven projects in our Medicaid system.[28] We now have ninety-one different contracts with vendors and almost 80,000 providers,[29] and AHCA personnel are responsible for managing all of those relationships, initiatives, and contracts.

II. REINVENTING MEDICAID

We cannot reform Medicaid on a piecemeal basis and expect any better result. We must rethink, redefine, and reinvent it. Our focus should not be on how to arbitrarily cut dollars or trim programs to save costs. The debate should be about how to use time-honored market principles to drive better results—including better patient outcomes for people in the program, improved access to quality care, and stabilized costs for the system. At best, government programs are immune to market forces. At worst, they thwart them and artificially stagnate market dynamics. A government delivery system for health care will never bring the needed market forces to bear. Putting health care choices in the

26. *See* Ctrs. for Medicare & Medicaid Servs., U.S. Dep't of Health & Human Servs., Medicaid Waivers and Demonstrations List, *available at* http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp#TopOfPage. Such waivers of federal law are granted pursuant to 42 U.S.C. § 1315 & § 1396n (2005).

27. For example, the Florida Managed Care Waiver (Medipass), the Florida Project AIDS Care Waiver, and the Florida Elderly and Disabled Adults Waiver were originally granted in 1990, 1990, and 1993, respectively, and have been periodically renewed since then. Florida Managed Care Waiver (Medipass), *available at* http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=data&filterValue=Florida&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS042825; Florida Project AIDS Care Waiver, *available at* http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=data&filterValue=Florida&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS052739; Florida Elderly and Disabled Adults Waiver, *available at* http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=data&filterValue=Florida&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS052732.

28. MODERNIZATION PROPOSAL, *supra* note 8, at 1.

29. WAIVER APPLICATION, *supra* note 6, at 1. The ninety-one vendor contracts are on file at the Florida Agency for Health Care Administration and are publicly available.

hands of consumers and encouraging competition among providers might do so.

In a "real" health care market, driven by consumer choice and competition among providers, technology would already be incorporated into the industry to improve effectiveness and efficiency, raising results and lowering costs along the way. Electronic information systems, for example, can reduce errors and increase efficiency. As recently as last year however, only about 5% of doctors prescribed medication electronically, although three billion prescriptions are written annually.[30] According to a recent survey by the Centers for Disease Control, less than one-third of hospital emergency and outpatient departments, and 17% of doctors' offices use electronic medical records.[31] By contrast, businesses across the nation are quickly moving to paperless systems to increase speed, information sharing, and accuracy. They save money and serve customers better that way. In a competitive environment, health care providers would search for ways to raise quality of care and lower costs as well.

The health care market in general, whether Medicaid or private, is unaffected by the competitive forces that drive innovation in other markets. For example, two decades ago the banking industry developed and delivered automated teller machines to better serve the emerging needs of their consumers and have now leveraged the Internet to make their services even more convenient and efficient. The government did not mandate the new technology. The government did not provide the funding and directive for research and development. The banks made the investment to gain the edge and stay competitive in their industry. By contrast, the government is called on to demand and fund the development of the technology platform for electronic health records, because there is no competitive pressure among providers that will drive it.[32]

In addition to innovation and technology, in a real health care market, we would focus on disease prevention and personal responsibility, which would also lower costs and raise quality of life for participants. We do not focus much on prevention or personal responsibility today, in Medicaid or in the private health care market. If we are to save Medicaid and ultimately improve access to

30. Lynne Peterson, *E-Prescribing*, TRENDS-IN-MED., Mar. 2004, at 7, *available at* http://www.trends-in-medicine.com/March2004/HIMSS034p.pdf.

31. Catharine W. Burt & Esther Hing, U.S. Dep't of Health & Human Servs., *Use of Computerized Clinical Support Systems in Medical Settings: United States, 2001-03*, 353 ADVANCE DATA FROM VITAL & HEALTH STAT. 3 (2005), *available at* http://www.cdc.gov/nchs/data/ad/ad353.pdf.

32. *See* Press Release, U.S. Dep't of Health and Human Servs., Thompson Launches "Decade of Health Information Technology," July 21, 2004, http://www.hhs.gov/news/press/2004pres/20040721a.html; THE LEWIN GROUP, INC., HEALTH INFORMATION TECHNOLOGY LEADERSHIP PANEL FINAL REPORT 11-12 (2005), *available at* http://www.hhs.gov/healthit/HITFinalReport.pdf.

care for everyone, I believe we must take steps to create a market-driven health care system.

III. FLORIDA'S REFORM INITIATIVE

In January 2005, I announced a plan to introduce market principles into the Florida Medicaid system.[33] During its 2005 session, the Florida Legislature passed a bill based on that proposal, giving the state the authority to pursue federal waivers and move towards a phased implementation during 2006, with plans for statewide expansion based on results.[34]

Florida is not alone in the struggle to sustain Medicaid. In December 2004, the National Governors Association (NGA) sent a letter to House and Senate leaders urging reforms for Medicaid.[35] Furthermore, the Kaiser Commission on Medicaid and the Uninsured reports that all fifty states initiated at least one new effort to contain Medicaid costs in fiscal year 2003 and planned to do more in 2004.[36] Nevertheless, thirty-five states experienced a Medicaid budget shortfall in fiscal year 2003.[37] The National Association of State Budget Officers (NASBO) estimates that in 2004, for the first time in history, states spent more on Medicaid than on elementary and secondary education combined.[38]

As states are reducing their Medicaid rolls by thousands of people, and announcing budget cuts for the program, Florida is moving towards a solution. We plan to reinvent Medicaid to create a competitive health care market driven by educated consumers who are empowered to make purchasing decisions for themselves.

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33. Press Release, Executive Office of Governor Bush, Governor Bush Announces Plan to Transform Medicaid (Jan. 11, 2005), *available at* http://www.myflorida.com/myflorida/eogadmin/showPress.jsp?press_id=4652.

34. 2005 Fla. Laws 133.

35. Letter from Mark R. Warner, Va. Governor and Chairman, Nat'l Governors Ass'n., and Mike Huckabee, Ark. Governor and Vice Chairman, Nat'l Governors Ass'n., to Bill Frist, Senate Majority Leader; Harry Reid, Senate Minority Leader; J. Dennis Hastert, Speaker of the House of Representatives; and Nancy Pelosi, Minority Leader of the House of Representatives (Dec. 22, 2004), *available at* http://www.nga.org/portal/site/nga/menuitem.cb6e7818b34088d18a278110501010a0/?vgnextoid=496c9e2f1b091010VgnVCM1000001a01010aRCRD.

36. VERNON SMITH ET AL., KAISER COMM'N ON MEDICAID AND THE UNINSURED, STATES RESPOND TO FISCAL PRESSURE: STATE MEDICAID SPENDING GROWTH AND COST CONTAINMENT IN FISCAL YEARS 2003 AND 2004, at 2 (2003), *available at* http://www.kff.org/medicaid/upload/States-Respond-to-Fiscal-Pressure-State-Medicaid-Spending-Growth-and-Cost-Containment.pdf.

37. *Id.* at 36.

38. NAT'L ASS'N OF STATE BUDGET OFFICERS, 2003 STATE BUDGET EXPENDITURE REPORT 17, 50 (2004), *available at* http://www.nasbo.org/Publications/PDFs/2003ExpendReport.pdf.

If we respect Medicaid consumers enough to offer real health care choice and provide the education they need to make informed decisions, we empower them to demand more from their providers, and we create the competition in the market to drive innovation and quality up and costs for services down.

We have seen this principle at work in limited sectors of health care, specifically in areas where consumers pay the tab rather than third-party insurers. For example, when Lasik eye surgery was first introduced, the procedure cost thousands of dollars. Most insurers found it more cost-effective to cover corrective lenses rather than surgery, so consumers who wanted the procedure paid for it out of their own pockets. These consumers compared prices and services, creating competition among providers that drove prices down and service levels up. Today, Lasik is offered by thousands of practitioners for a fraction of the original cost.[39] By empowering Medicaid consumers to make their own choices and creating the flexibility for providers to meet their needs through a variety of plans, we can harness those same market principles to strengthen the Medicaid system to serve its consumers better and slow the growth in costs.

We have decided the role of government should be to fund the program and ensure providers meet quality standards and fiscal soundness. Government should not manage health care delivery to millions of consumers with individual needs and unique issues.

We are taking the first steps to put the focus back on the patient, encourage strong patient/doctor relationships, and allow competition in the market to drive access and quality of care up from its current levels in the Medicaid system. While the funding for Medicaid is a state and federal obligation, delivery of services should be driven at the local level. Our goal is to make the patient the first priority of our Medicaid system and take state government out of health care decisions. To achieve this aim, we have the encouragement of the U.S. Department of Health and Human Services,[40] and a sweeping plan—Empowered Care.

39. Scott Graham, *Laser Surgery Popularity Ignites War on Prices*, BALT. BUS. J., June 16, 2000, *available at* http://www.bizjournals.com/baltimore/stories/2000/06/19/focus2.html; Adam Katz-Stone, *Managed Care Helps Shrink Laser Eye Surgery Prices*, WASH. BUS. J., June 30, 2000, *available at* http://www.bizjournals.com/washington/stories/2000/07/03/focus3.html; *see also* Walt Bethke, *National Panel: Surgeons Eye Lenses*, REV. OF OPHTHALMOLOGY, Feb. 15, 2003, *available at* http://www.revophth.com/index.asp?page=1_285.htm.

40. Letter from Michael O. Leavitt, Sec'y of U.S. Dep't of Health & Human Servs., to Jeb Bush, Governor of Fla. (Apr. 1, 2005) (on file with the Executive Office of the Governor).

IV. EMPOWERED CARE

Medicaid is an entitlement program. We believe it should also be an empowerment program for the people within it. Floridians in the private market have the right to choose health care plans, providers, and services according to their needs. People in poverty who rely on Medicaid should have that same power to direct their own health care.

We expect individuals in Medicaid to take an active role in their health care. We are giving them control over resources allocated on their behalf by enabling them to select a health plan from a variety of benefit packages that meet their needs. We are also adding financial incentives to encourage and reward them for taking personal responsibility for their health and making healthful lifestyle choices.

Our new vision of Medicaid respects and trusts the participants by allowing them to make decisions about their health care based on their personal needs, instead of having bureaucrats arbitrarily do it for them based on contracts and directives. We reject the unspoken but pervasive bias that low-income residents lack the will or ability to make these decisions, and we are committed to providing the individualized education and counseling they need to make informed choices that serve their best interests.

Empowered Care will reinvent Florida's Medicaid program by creating a system that looks and operates more like a private market with either insurer- or provider-based local systems of care. When fully implemented, today's arbitrarily defined benefit system will be replaced by a system in which patients have control over their health care dollars, and provider networks and insurers compete for Medicaid patients and their purchasing power.

We envision a Medicaid market with robust choices offered by a variety of traditional insurers, managed care organizations (MCOs), and provider-service networks created to serve unique needs of specific Medicaid populations. We expect to see targeted plans to meet the needs of minority communities and the specific needs of children, senior citizens, people with chronic diseases, and other groups.

Instead of reimbursing providers for services rendered, the State of Florida will provide support and assistance to each Medicaid consumer by paying a risk-adjusted "insurance" premium for everyone in Medicaid.[41] These Medicaid consumers will then have the power to choose a coverage plan or a network of providers offering a service delivery system that best suits their needs.[42] The premiums will be based on historic spending patterns and will be tailored to the specific medical condition of each Medicaid participant.[43] By

41. WAIVER APPLICATION, *supra* note 6, at 39-40.

42. *Id.* at 3.

43. *Id.* at 17, 39-40.

basing the premiums partly on individual risk factors, this plan will ensure that Floridians with chronic illness and other special needs will have the resources they need to access the care they require.

The State of Florida has compiled data on service usage and cost of Medicaid services for decades.[44] We know what we have paid for services for specific types of patients, and we have historically used this claims information to guide our Medicaid budgeting process. Under Empowered Care, we will use this data to set premiums that are actuarially equivalent to the historic costs of administration and delivery of the Medicaid programs and services for specific patient groups.[45] This idea ensures that patients have the resources to address their health care needs and that providers can make a profit serving the Medicaid population effectively. Premiums will start at current Medicaid spending levels.

Once a person chooses a service plan through Empowered Care, the plan itself acts as an incentive to encourage providers to focus on preventive care. For example, a provider examining a child may find previously undiagnosed asthma. Armed with that information, the provider can receive a higher, risk-adjusted premium for that patient and can use the funds to effectively manage the condition, preventing more serious and expensive health issues. The premium program of Empowered Care makes it more profitable for providers to educate patients and to work with them to prevent illness and manage disease.

The competitive market and local delivery of health care in the Empowered Care Plan will reduce fraud, improve health care outcomes, and lower administrative costs, which in turn will bring predictability to the Medicaid program, slow the rate of growth, and allow reinvestment of resources into patient care.

V. COMPONENTS OF CARE

The financing of the new Medicaid program will be divided into three components: comprehensive, enhanced, and catastrophic care. Medicaid participants will be eligible for all three components.

The comprehensive component covers basic care and other care that most people need most of the time.[46] While the state will determine the amount of the premium for each Medicaid consumer and evaluate all plans to ensure they meet standards of service and actuarial equivalence, the state will not determine

44. The data is collected via computer by the Medicaid fiscal agent, derived from Medicaid billing and payment records. Reports are generated on an as-needed basis for various purposes but are not published.

45. WAIVER APPLICATION, *supra* note 6, at 18.

46. *Id.* at 20-21.

the amount or scope of benefits offered by the providers. Competing vendors will offer different packages to appeal to different Medicaid consumers. They will negotiate payment rates for providers, services offered, and specialties covered within their own systems. The differences among the plans generate the competition required to create a more realistic market that will ultimately raise the quality of and access to service for Medicaid patients.

The state will oversee the quality and fiscal solvency of these networks and systems, ensure the plans offer appropriate benefits, educate consumers regarding the choices available, and help them compare each plan.[47] Each Medicaid consumer will receive independent choice counseling free of charge to assess their options in relation to their specific needs and spending power.[48] Florida is in the process of developing an extensive consumer education and rating system so individuals will fully understand their choices and can make informed decisions regarding their health plan. Choice counseling materials will be provided through printed materials and via a toll-free call center. Face-to-face counseling will also be provided to Medicaid consumers.[49]

Once a Medicaid patient has incurred health care costs that surpass a specific cost amount in a given year, the patient's care will be financed as catastrophic care.[50] All individuals are entitled to this catastrophic coverage, regardless of their comprehensive care plan, up to a maximum benefit limit. Provider networks and health plans may offer comprehensive or catastrophic packages, or both. Medicaid will establish and provide the premiums to buy both.

We envision a robust market of networks, plans, and service systems created by providers and vendors with similar goals and commitment to the specific populations they serve, whether based on ethnicity, chronic illness, or patient age. A family with small children will need different services than an elderly woman who lives alone. A patient with AIDS will need specific care options and will benefit from the support of providers who are all dedicated to addressing the wide variety of concerns and needs of AIDS patients. Risk-adjusted premiums and competitive health plans ensure Medicaid consumers in Florida will have the resources and access to obtain the best care for their specific needs.

To create this robust market, we must make Medicaid an attractive option for a variety of vendors and providers. We predict that traditional insurers and health maintenance organizations (HMOs) entering the Empowered Care marketplace will offer both comprehensive and catastrophic care plans. These organizations have the risk-assessment experience and the financial reserves to

47. FLA. STAT. ANN. § 409.91211(3)(h)-(i) (2005).

48. § 409.91211(3)(k).

49. WAIVER APPLICATION, *supra* note 6, at 12-14.

50. MODERNIZATION PROPOSAL, *supra* note 8, at 7 fig.1, 8.

manage the inherent risks of full coverage. However, we also want to encourage the formation of networks of doctors, hospitals, pharmacies, and other providers with common service goals and commitments to specific patient populations. These provider service networks will offer service plans and benefits packages targeted to meet the needs of the patient niches they serve and will compete with insurers and HMOs for Medicaid patients.

As these networks expand, they will create more options to serve the needs of Medicaid consumers. We understand these provider service networks, lacking the financial reserves of traditional insurers, may not be willing or able to assume risk for the catastrophic care component of the program. To ensure the Empowered Care market is attractive to these providers, the catastrophic care premium will serve as "reinsurance" for these networks to encourage their participation in the Medicaid market.

When I announced the plan for Empowered Care, I was joined by a cross-section of the Medicaid system—from patients and policymakers to administrators and doctors, like Dr. Nelson Adams, a member of PhyTrust of Florida, a minority provider network system serving a predominately African-American patient population.[51] We received strong support from healers like Dr. Adams for a system that will allow them to expand their services, reduce the administrative burden of the Medicaid program, and work with their patients to determine treatment options for the best outcome, rather than follow the dictates of a government contract prone to conflicts and arbitrary restrictions.

We will encourage quality providers, from general practitioners to specialists, to create networks of care that Medicaid patients can choose according to their personal care requirements. As we make it easier for quality providers to be the healers they want to be and give them the flexibility to practice medicine to the best of their ability and judgment, we will encourage more of them to enter the Medicaid market, increasing the access to care for the people who rely on the Medicaid system.

VI. PREVENTION

It is more humane and cost-effective to help patients prevent disease and manage chronic conditions than to only treat health crises resulting from neglect and unhealthy behavior. In practice, the arbitrary rules and lines drawn in Medicaid programs and contracts often ignore the logic of this equation, to the frustration of patients and the exasperation of providers. True change must include a broader focus on prevention.

51. Press Release, Executive Office of Governor Bush, Governor Bush Announces Plan to Transform Medicaid (Jan. 11, 2005), *available at* http://www.myflorida.com/myflorida/eogadmin/showPress.jsp?press_id=4652.

Today's medical model is based on disease treatment, not personal behavior and choices. Florida Medicaid spends tremendous resources treating chronic conditions, such as diabetes and smoking-related illnesses, which could be managed or alleviated by personal behavior.[52] By making prevention, healthy lifestyle incentives, and choices key components of the reinvented Medicaid, we can begin to change the medical model into an initiative in which choices have consequences and people can change their behavior in order to achieve better outcomes and healthier lives.

In addition to the comprehensive and catastrophic coverage, Medicaid consumers will also be eligible for enhanced benefits.[53] The state will set aside a premium into an enhanced benefit account for each participant. Participants must gain access to these funds "by exercising personal responsibility and" following "healthy practices" such as taking medicines as prescribed, participating in health screening programs, or obtaining prenatal care early in pregnancy.[54] By making these healthy choices, Medicaid consumers generate contributions to their enhanced benefit account that can be used for a wide variety of health-related purchases, including additional coverage, weight loss programs, vitamins, and the purchase of private insurance. When consumers transition out of Medicaid, any earned but unused money in the enhanced benefit account still belongs to them. It can be used to defray the cost of private or employer-sponsored insurance and make the transition out of the program easier.[55]

Mr. Truman Hill, a farmer from Hilliard, Florida, is one of the 2.2 million people served by Florida Medicaid. He stood beside me as I signed the 2005 legislation to begin the process of reinventing Medicaid in Florida.[56] The fact that he was standing at all made him a prime example of the power of preventive care and healthy choices. Diagnosed with diabetes, Mr. Hill ignored much of his doctor's advice about managing his disease. He carried on as usual, until he simply could not any longer. His disease progressed unchecked until he was unable to work his farm and was in danger of losing his legs.

Fortunately, he was referred to a disease management program through

52. *See* AGENCY FOR HEALTHCARE RESEARCH AND QUALITY, U.S. DEP'T OF HEALTH & HUMAN SERVS., H-CUP HIGHLIGHTS, Jan. 2005, at 3, *available at* http://www.ahrq.gov/data/hcup/highlight1/high1.pdf; CTR. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., HEALTH & ECONOMIC IMPACT: SMOKING CESSATION FOR PREGNANT WOMEN (July 2002), *available at* http://www.cdc.gov/tobacco/research_data/economics/health_econ_impact.pdf.

53. MODERNIZATION PROPOSAL, *supra* note 8, at 7-8.

54. *Id.* at 7, 8.

55. *Id.*

56. *See generally* Jeb Bush, *Governor's Medicaid Proposal Designed to Improve Care*, FRONTPAGEFLORIDA.COM, Nov. 2005, http://www.frontpageflorida.com/FloridaForum/FloridaForumArticles/GovernorsMedicaidProposal/tabid/200/Default.aspx (describing Truman Hill's medical condition and subsequent improvement).

AHCA, and he was assigned a care manager at Shands Jacksonville Medical Center to help him get control of his condition. The manager educated him about his disease and medications. She taught him to monitor his blood pressure and check his blood sugar and encouraged him to eat more healthfully and exercise. With this focus on preventive measures, Mr. Hill made the lifestyle choices required to manage his diabetes, which enabled him to ultimately lose sixty pounds, keep his legs, and continue working on his farm.

Our goal is to create many more triumphs like Mr. Hill's story. The enhanced benefit component of the Empowered Care plan is designed to encourage patients to take preventative measures in order to avoid disease disaster—raising the quality of life for Floridians in Medicaid while lowering the cost of care. Health care providers in the program will also be encouraged to focus on prevention. Since they will be paid a premium for coverage rather than reimbursed for service, their profitability goes up as disease rates and costs stay down.[57] Physicians focused on prevention will also have better outcomes and higher patient satisfaction, which will be an advantage in a competitive market with educated consumers.

VII. OPT-OUT OPTION

One of the most innovative ideas in our Empowered Care program is the provision that allows Medicaid consumers to opt out of the Medicaid program and use their state-paid premium to subsidize the purchase of private insurance.[58] Like many states, Florida has Medicaid participants who have access to insurance through their employer, but who cannot afford the employee share of the premiums. Their income levels make them eligible for Medicaid coverage, and they turn to this public assistance out of necessity. We believe that given the choice, and faced with the perceived stigma of Medicaid participation, a number of these working Floridians would prefer to participate in a private plan. The Medicaid premium program will allow them to make that choice, giving them a bridge to independence.[59] Those who opt out of the program in favor of employer or private insurance will register with the state and direct their defined premium to be used for the purchase of insurance through an employer or private insurer of their choice.[60] As they transition out of Medicaid, they will receive education and support from the state to ensure the transition to private insurance is successful.[61] Florida Medicaid will pay

57. WAIVER APPLICATION, *supra* note 6, at 4.
58. *Id.* at 30-33.
59. *Id.* at 4.
60. *Id.* at 32.
61. *Id.* at 31.

any premium contributions directly to the employer or private insurer.[62]

Empowered Care will give many low-income Floridians the power to control their health care decisions and the incentive to manage their health more effectively. Their health care choices will help drive an expanded, competitive Medicaid market that will attract providers and spur innovation and efficiency. Such market improvements will both raise the quality of care and reduce the costs of that care.

VIII. IMPLEMENTATION

On June 3, 2005, I signed Florida Senate Bill 838 to begin the process of introducing market principles and consumer choice into Florida's Medicaid system.[63] The legislation gives AHCA authority to seek the necessary experimental, pilot, or demonstration project waiver from the federal government, pursuant to Section 1115 of the Social Security Act.[64] The law also grants authority to apply for a federal waiver from the Centers for Medicare and Medicaid Services to allow Florida Medicaid consumers to purchase health care coverage through an employer-sponsored health insurance plan instead of through a Medicaid-certified plan.[65] This waiver will be key to our "opt-out" provision.

By passing Senate Bill 838, Florida lawmakers expressed their intent to stabilize Medicaid expenditures, using the expenditures for the three years prior to implementation as a benchmark for comparison.[66] They also expressed their commitment to consumer education and choice as well as access to medically-necessary services. In addition, their goal is to coordinate preventive, acute, and long-term care while reducing unnecessary utilization of services in the program.

The new legislation directs AHCA to provide Medicaid consumers with a comprehensive and coordinated managed care system and to encourage the development of managed care programs by federally-qualified health centers and rural health clinics, county health departments, and other federally-, state-, or locally-funded entities serving specific geographic areas.[67] The Agency is also required to develop "standards and credentialing requirements" for participating managed care networks, including "fiscal solvency, quality of

62. *Id.* at 32.

63. Press Release, Executive Office of Governor Bush, Governor Bush Signs Landmark Medicaid Reform Legislation (June 3, 2005), *available at* http://www.myflorida.com/myflorida/eogadmin/showPress.jsp?press_id=5168.

64. FLA. STAT. ANN. § 409.91211(1) (2005).

65. § 409.91211(4)(f).

66. § 409.91211(3)(x).

67. § 409.91211(1).

care, and adequacy of access to health care providers."[68]

In the implementation process, AHCA must also develop "actuarially sound, risk-adjusted capitation rates," which can be separated and allocated to comprehensive care, catastrophic care, and enhanced benefits.[69] The Agency will create "stop-loss requirements" to ensure that costs charged to the comprehensive component do not rise to an unsupportable level, and provide for the transfer of any unsupportable costs to the catastrophic component.[70]

Choice counseling will be a critical success factor for a consumer-driven Medicaid system. AHCA is required by law to provide information to Medicaid consumers to help them select an appropriate health plan.[71] Each consumer will receive a list and description of the benefits each plan provides as well as information about cost sharing and performance data.[72] Consumers will also receive an explanation of benefit limitations, contact information including provider identification, location, and transportation limitations, and any other information AHCA determines will help a consumer better understand his or her options.[73] The legislation also calls for fair grievance resolution processes for Medicaid consumers as well as Medicaid providers, and prohibits unfair marketing practices by managed care plans.[74]

Our plan has generated interest and initial encouragement from our federal partners. Secretary of Health and Human Services Michael Leavitt has expressed enthusiasm for our comprehensive proposal, stating, "we are eager to continue to work with you in carrying out this endeavor."[75] Assuming we can secure the required federal waivers, the legislation gives AHCA authority to implement Florida's consumer-driven Medicaid program in Broward and Duval counties first.[76] These counties were selected by the Legislature for the initial implementation because of their diverse Medicaid populations, their readiness to launch provider service networks that meet the requirements of the program, and their strong mix of providers, many of whom have expressed strong support for the Empowered Care model. With legislative approval, Florida will ultimately expand the program statewide.

As the program is implemented throughout the state, we plan to provide Medicaid consumers a minimum of two health plan choices, although some

68. § 409.91211(3)(h).
69. § 409.91211(3)(d).
70. § 409.91211(3)(f).
71. § 409.91211(3)(i).
72. *Id.*
73. *Id.*
74. § 409.91211(3)(p), (q), (r).
75. Letter from Michael O. Leavitt, Sec'y of U.S. Dep't of Health & Human Servs., to Jeb Bush, Governor of Fla. (Apr. 1, 2005) (on file with the Executive Office of the Governor).
76. § 409.91211(1)(a).

now extremely underserved rural areas will initially present a challenge in this regard. As implementation progresses, we expect to see more options and greater choice for consumers in the program as more providers create networks to serve Medicaid patients profitably and traditional insurers offer benefit packages designed to attract Medicaid consumers.

IX. LONG-TERM CARE

Florida is also adopting the core principles of Empowered Care into the Medicaid programs for long-term care. We are moving from a fragmented, complex system of many unconnected long-term care waivers[77] to an integrated managed care model.[78] Implementation will begin in two pilot markets, Pensacola and Orlando.[79] The state will pay monthly premiums to managed care entities to coordinate the full spectrum of care, from doctors' offices to nursing homes, for Medicaid seniors.[80] Both MCOs and provider service networks will be encouraged to participate.[81] This variety of providers, in addition to competitive procurements, plan evaluations and consumer choice,[82] will promote competition and ensure better services for consumers. Economic incentives in the managed care model will work to encourage the delivery of services through community-based alternatives at a lower cost to the Medicaid program. In addition to cost savings, this program will empower frail Floridians to remain in their own communities among family and friends.

As with Empowered Care, education will be important.[83] Choice counseling programs will be tailored to the elder participants; individualized assistance will be provided when necessary.[84] A primary goal will be to assure that consumers have the information required to make an informed choice that best addresses their needs.

Florida is also exploring a similar model to better serve people with developmental disabilities in the Medicaid system. Key components of this

77. DIV. OF MEDICAID, AGENCY FOR HEALTH CARE ADMIN., FLORIDA SENIOR CARE PUBLIC MEETING: A MANAGED, INTEGRATED LONG TERM CARE PROGRAM IMPROVING MEDICAID SERVICES FOR FLORIDA'S SENIORS 9 (2005), *available at* http://ahca.myflorida.com/Medicaid/long_term_care/pdfs/iltc_public_mtg_orlando_083005.pdf [hereinafter LONG TERM CARE PRESENTATION].

78. § 409.912(5); LONG TERM CARE PRESENTATION, *supra* note 77, at 10.

79. § 409.912(5); Press Release, Fla. Agency for Health Care Admin., Agency for Health Care Administration and Department of Elder Affairs Announce Locations for Integrated Long-Term Care Pilot Projects (July 22, 2005), *available at* http://ahca.myflorida.com/Medicaid/long_term_care/pdfs/ltc_pilot_072205.pdf.

80. § 409.912(5); LONG TERM CARE PRESENTATION, *supra* note 77, at 15.

81. § 409.912(5)(b).

82. LONG TERM CARE PRESENTATION, *supra* note 77, at 17-18.

83. *Id.* at 22.

84. *Id.* at 20.

effort are the development of provider networks and the adaptation of choice counseling systems to meet the unique needs of participants and their families. More customized choices will increase the opportunities for self-determination and enhance the quality of life for persons with disabilities.

X. FLORIDA AS A TEMPLATE

Every state in the nation is facing an impending Medicaid crisis as health care access and coverage for our poorest and sickest residents are threatened and rising costs devour state budgets. Every administration feels the pressure to find a solution. Despite the increasing burden of rising Medicaid costs on state budgets, a recent survey conducted by the Kaiser Family Foundation found that 74% of the respondents believe Medicaid is a "very important" government program, ranking it close to Social Security and Medicare in importance.[85] Medicaid garnered as much support as aid to public schools and significantly higher support among the 1201 people polled than defense and foreign aid.[86]

Florida's demographics add pressure to the situation. As a top retirement location, our population is older than the rest of the nation. From 1992 to 2002, Florida's elderly population grew 15.2%, 1.5 times faster than the national average of 10.2%.[87] Of the state's nearly 2.9 million seniors in 2002, 10% were below the federal poverty level.[88] As the "Gateway to the Americas," Florida has one of the most diverse populations in the country as well, adding to the richness of our culture. That diversity leads to an unusually wide variety of health care needs, which creates a significant challenge for us to implement a public health care program that meets such needs. Florida today is a microcosm of America ten years from now. As the nation's population ages and diversifies, more states will face the acute crisis that Florida battles today.

Florida's Medicaid system will collapse under its own weight unless we fundamentally change the way it operates. For more than thirty years, the system has undergone cost cutting and program modifications with abysmal results. We will not save it by doing things as we have always done them. We must think beyond the numbers and introduce the dynamics and synergies

85. KAISER FAMILY FOUND., NATIONAL SURVEY OF THE PUBLIC'S VIEWS ABOUT MEDICAID: CHARTPACK 3 fig.1 (June 2005) (survey conducted Apr. 1—May 1 2005), *available at* http://www.kff.org/medicaid/upload/National-Survey-of-the-Public-s-Views-About-Medicaid-Chartpack.pdf.

86. *Id.* at 2, 3 fig.1.

87. ADMIN. ON AGING, U.S. DEP'T OF HEALTH AND HUMAN SERVS., A PROFILE OF OLDER AMERICANS: 2003, at 9 fig.6 (2003), *available at* http://www.aoa.gov/prof/Statistics/profile/2003/2003profile.doc (citing Census Bureau Population Estimates (for population information) and Current Population Survey, 2001, 2002, and 2003 Annual Social and Economic Supplements (for poverty information)).

88. *Id.*

needed for real, meaningful change.

Introducing market principles into Medicaid will not be quick or easy. It will require tremendous coordination among myriad constituencies and stakeholders at the local, state, and federal levels. As we move forward, we must identify the ways in which market forces can be used to create positive change, and accept the reality that there will always be sectors of the health care arena in which market forces will not work and are not appropriate. For example, the best place for a competitive market is in basic, routine, day-to-day health care services. Our comprehensive component is designed to maximize that market potential. Consumers should have the information and ability to comparison shop for services, providers, and health care plans covering this routine care. Catastrophic coverage will be less competitive due to the nature of the expenses and the urgent need for care. Additionally, we must acknowledge that there will always be those among us with serious, life-limiting health issues that cannot be alleviated through behavior or basic care. As a just and caring society, we are obligated to provide these frailest of our residents with the highest quality of care to maintain the highest quality of life. An effective Medicaid system will address these needs, applying competitive market principles where possible and providing compassionate care.

Effective, modern Medicaid starts with the premise that the people in the program should have the power to make meaningful choices for themselves and their families. We are reinventing the incomprehensible maze that is Medicaid today into a patient-centric system that enhances the quality of life for Floridians who rely on Medicaid services, rewards healthy lifestyle decisions, and saves millions of dollars. The new system will leverage competitive market principles to unleash innovation, spurring new and better ways to serve patients. Florida's Medicaid will become a more fiscally responsible and predictable system, with spending determined by the Florida Legislature and the federal match. It will reduce fraud, by combining the oversight of AHCA with the management expertise of provider service networks, insurers, and MCOs. The implementation of these changes will be phased in over time to allow us to measure results, monitor impact, and avoid unintended consequences.[89]

The need for Medicaid reform, like welfare reform before it, is an issue that crosses state and party lines. Effective welfare reform started at the state level with innovative ideas that worked and spread to the federal level. The answer to the Medicaid crisis will be found the same way, by giving states like Florida the power and the flexibility to build a Medicaid system for the twenty-first century—a program not limited by the problems of the past, but focused on the possibilities of the future. If we succeed, we will not only serve Floridians in our Medicaid system, we will offer a template for other states to

89. § 409.91211(1), (9).

follow and open the door to bipartisan consensus for reform at the federal level. Ultimately, we can create the momentum and critical mass we need to empower all health care consumers to drive positive, market-driven change in the overall health care market.

EPILOGUE

The Florida Medicaid reform effort advanced significantly since this article was submitted for publication. In October 2005, the Florida Agency for Health Care Administration (AHCA) submitted to the federal government a proposal to waive certain federal statutory provisions and authorize Florida to move forward with reform.[90] Later that month, the Centers for Medicare and Medicaid Services (CMS) approved Florida's waiver proposal and set certain terms and conditions for reform implementation.[91]

90. DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., FLORIDA MEDICAID REFORM: APPLICATION FOR 1115 RESEARCH AND DEMONSTRATION WAIVER (2005), *available at* http://ahca.myflorida.com/Medicaid/medicaid_reform/waiver/pdfs/medicaid_reform_waiver_083005.pdf [hereinafter WAIVER APPLICATION]; Press Release, Fla. Agency for Health Care Admin., Florida Submits Bold Medicaid Reform Plan For Federal Approval (Oct. 3, 2005), *available at* http://ahca.myflorida.com/Executive/Communications/Press_Releases/archive/2005/10-03WaiverSubmittedtoCMS.pdf.

91. DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., FLORIDA MEDICAID REFORM: 1115 RESEARCH AND DEMONSTRATION WAIVER (2005), *available at* http://ahca.myflorida.com/Medicaid/medicaid_reform/waiver/pdfs/medicaid_reform_waiver_final_101905.pdf [hereinafter MEDICAID WAIVER]; CTRS. FOR MEDICARE AND MEDICAID SERVS., U.S. DEP'T OF HEALTH & HUMAN SERVS., CENTERS FOR MEDICARE & MEDICAID SERVICES SPECIAL TERMS AND CONDITIONS (Oct. 19, 2005), *available at* http://ahca.myflorida.com/Medicaid/medicaid_reform/waiver/pdfs/cms_special_terms_and_conditions.pdf [hereinafter SPECIAL TERMS AND CONDITIONS]; CTRS. FOR MEDICARE AND MEDICAID SERVICES, U.S. DEP'T OF HEALTH & HUMAN SERVS., WAIVER AUTHORITIES FOR FLORIDA'S MEDICAID REFORM SECTION 1115 DEMONSTRATION (Oct. 19, 2005), *available at* http://ahca.myflorida.com/Medicaid/medicaid_reform/waiver/pdfs/waiver_authorities_for_floridas_medicaid_reform.pdf; Press Release, Fla. Agency for Health Care Admin., Florida's Innovative Medicaid Reform Plan Receives Federal Approval (Oct. 19, 2005), *available at* http://ahca.myflorida.com/Executive/

The CMS approval defines a phase-in process for expanding reform to apply to all Medicaid populations and services, statewide.[92] The waiver permits the state to develop risk-adjusted premiums for Medicaid enrollees in managed care plans.[93] The premium will have two components, comprehensive care and catastrophic care, and will be actuarially comparable to all services covered under the current Florida Medicaid program.[94] The waiver permits Florida to establish enhanced benefits accounts to provide incentives to Medicaid Reform enrollees for exercising healthy behaviors.[95] As enrollees earn access to these incentives, funds will be deposited into individual enhanced benefits accounts for enrollees to use to offset certain health-care-related costs, such as over-the-counter pharmaceuticals and vitamins.[96] The waiver authorizes Florida Medicaid enrollees to use their premiums to "opt out" of Medicaid and purchase insurance through the workplace.[97] The approval also includes an agreement to establish a Low-Income Pool (LIP) to permit direct payments and distributions to safety-net providers in the state for the purpose of making coverage available to the uninsured through provider access systems.[98] The LIP will replace the Upper Payment Limit program, which terminates July 1, 2006,[99] and permits the state to invest up to $1 billion each year for the next five years for distribution to hospitals.[100]

In December, the Florida Legislature passed House Bill 3-B, which authorizes AHCA to implement the federal waiver and proceed with reform.[101] House Bill 3-B also imposed additional mandates for reform. The law requires the Agency to develop quality assurance and performance improvement standards and a patient encounter database to be used to measure and monitor the performance of managed care plans and provider-sponsored networks.[102] AHCA must develop new procedures to prevent fraud and abuse in the

Communications/Press_Releases/archive/2005/10-19_FederalApprovalofWaiver.pdf.

92. MEDICAID WAIVER, *supra* note 91, at 51-52.

93. *Id.* at 39-40.

94. *Id.* at 16-26.

95. *Id.* at 26-29.

96. *Id.* at 26, 28.

97. *Id.* at 30-33.

98. SPECIAL TERMS AND CONDITIONS, *supra* note 91, at 24-26.

99. *Id.* at 26. The Upper Payment Limit program (UPL) is a mechanism that allows states to compensate hospitals for services provided to Medicaid and charity patients. The UPL program is funded by intergovernmental transfers, or transfers of monies from local governments to the state Medicaid program, and federal matching funds. The state distributes the total funds to hospitals statewide, pursuant to federal and state criteria. 42 U.S.C. § 1396 (2005); 42 C.F.R. § 447.272 (2005).

100. *Id.* at 24.

101. H.R. 3-B, 2005 B (Fla. 2005), 2005 Fla. Laws § 358, *available at* http://election.dos.state.fl.us/laws/05laws/ch_2005-358.pdf.

102. 2005 Fla. Laws § 358, at 13-15.

reformed program, where the shift from fee-for-service to managed care will present different fraud and abuse challenges.[103] House Bill 3-B requires AHCA to implement risk-adjusted capitation rates in phases, with full risk-adjustment permitted in the third year of reform, and establishes a Technical Advisory Council to advise the Agency on risk-adjusted rates, benefit design, and choice counseling.[104] The reform law codifies the LIP and establishes a Low Income Pool Council to advise the Agency on the financing and distribution of the LIP.[105]

Pursuant to its statutory mandate,[106] AHCA developed a Medicaid Reform Implementation Plan to provide additional structure to the reform process.[107] The Plan delineates the implementation actions the Agency is undertaking in order to begin operation of the waiver on July 1, 2006, and to expand statewide by 2011.[108] In developing the Implementation Plan, AHCA conducted workshops with providers, recipients, recipient advocates, and other interested parties in order to obtain comments and educate the public about Medicaid reform.[109]

The Agency is currently designing new payment systems for the reformed program[110] and contracting with managed care organizations, including provider service networks.[111] The Agency continues its outreach and education efforts[112] and will initiate public procurement processes for choice counseling services and for administration of the enhanced benefit and opt-out segments of Medicaid reform.[113]

Florida's efforts to integrate long-term care for Medicaid recipients have also advanced. In January 2006, AHCA applied to the federal government for waivers to start a pilot program to coordinate all Medicaid services for Florida's seniors and to better manage their care.[114] Upon receiving the waivers

103. *Id.* at 15-16.

104. *Id.* at 21-22. Provider service networks may use an alternate phase-in schedule for risk-adjusted rates. *Id.* at 11.

105. *Id.* at 2-3.

106. FLA. STAT. ANN. § 409.91211(6) (2005).

107. DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., FLORIDA MEDICAID REFORM IMPLEMENTATION PLAN (2005), *available at* http://ahca.myflorida.com/Medicaid/medicaid_reform/implementationplan/implementationplan_11-29-05.pdf [hereinafter IMPLEMENTATION PLAN].

108. *Id.* at 1

109. *Id.* at 1, 3, 5, 21.

110. *Id.* at 3, 9.

111. *Id.* at 3, 8.

112. *Id.* at 3, 5.

113. *Id.* at 3, 7, 10.

114. Press Release, Fla. Agency for Health Care Admin., The State of Florida Seeks Federal Waivers to Create Senior Care Program (Jan. 25, 2006), *available at* http://ahca.myflorida.com/Medicaid/long_term_care/pdfs/senior_care_program_waiver_pres

from CMS, the Agency will seek approval from the Florida Legislature and begin implementation.[115]

Unquestionably, Florida's Medicaid program is in need of comprehensive reform. Today's Medicaid system is growing at an unsustainable rate and only provides care once someone is sick instead of making available the services we know can improve health and quality of life, like preventive care, chronic disease management, and healthy lifestyle education. Creating a Medicaid marketplace and a patient-centered system with unprecedented choice will mean better access and increased quality of care for Florida's Medicaid recipients.

We are not alone in our desire to improve Medicaid. Since the approval of our waiver, we continue to receive calls from other states, indicative of the interest and excitement in this new approach. Florida leads the nation in the reforms it seeks to implement in Medicaid. As directed by President Bush's FY 2007 budget, the United States Department of Health and Human Services will develop a new federal Medicaid waiver initiative that emphasizes consumer-directed and market-driven approaches to health care as adopted by the State of Florida.[116] This development is an encouraging sign of cooperative federalism, as Florida works to reform Medicaid from the ground up in the policy laboratory of the state.

s_release_012506.pdf; DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., SECTION 1915(B) MANAGED CARE ORGANIZATION WAIVER PROGRAM FLA. SENIOR CARE WAIVER PROPOSAL (Jan. 25, 2006) , *available at* http://ahca.myflorida.com/Medicaid/long_term_care/pdfs/1915b_fsc_final_012506.pdf; DIV. OF MEDICAID, FLA. AGENCY FOR HEALTH CARE ADMIN., APPLICATION FOR A §1915 (C) HOME AND COMMUNITY BASED SERVICES WAIVER (Jan. 25, 2006), *available at* http://ahca.myflorida.com/Medicaid/long_term_care/pdfs/1915c_fsc_final_012506.pdf.

115. FLA. STAT. ANN. § 409.912(5)(e) (2005).

116. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2007, at 114 (2006) (budget proposals for the Department of Health and Human Services), *available at* http://www.whitehouse.gov/omb/budget/fy2007/pdf/budget/hhs.pdf.