

Congress of the United States
Washington, DC 20515

February 26, 2025

The Honorable Robert F. Kennedy, Jr.
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Kennedy,

By the end of February, Florida and the Centers for Medicare & Medicaid Services (CMS) must finalize the terms of the state's amendment to the Section 1115 waiver state terms and conditions. Without agency intervention, CMS is threatening to ignore the rulings of two Trump appointed federal judges and force Biden-era policies into the language of the waiver. This result would impose unnecessary oversight burdens on the state. We echo the recent message of Governor Landry¹ and ask that you ensure CMS honors the limits of the law so that the new administration shapes the CMS agenda in a manner consistent with the conservative platforms of states like Florida, Texas, and Louisiana. Certainly, these states' policy positions are in line with President Trump's conservative agenda.

This latest action by CMS is part of a larger, troubling saga of CMS playing games with our home state. For the last three years, CMS has subjected Florida to undue scrutiny and hardship. In 2022, only a year after Florida launched a CMS-approved supplemental payment program to assist the state's Medicaid providers, CMS announced a sweeping audit. CMS alleged that unidentified "media reports" suggested the new program involved private arrangements that allegedly corrupted the method of financing.² Although CMS publicly approved the same financing methods when used by other states—even confirming by email in 2019 that they were allowable³ and celebrating their use in Missouri decades before⁴—CMS suddenly claimed the arrangements were problematic in Florida. After announcing the audit, it appears CMS sought to cement an adverse Florida audit outcome by issuing sub regulatory guidance reinterpreting the laws and regulations

¹ Letter from Governor Jeff Landry to President Donald J. Trump (Feb. 12, 2025), *available at* <https://x.com/LAGovJeffLandry/status/1890050768071250199>.

² Letter from Rory Howe to Tom Wallace (Sept. 29, 2022), *available at* https://mcusercontent.com/6f30dcabca324361c55ad7aa4/files/17ff3f72-f3d8-14b2-0302-732aa1fa73c7/1_FL_Companion_Letter_9_29_22.pdf

³ Email from Kristin Fan to Barbara Eyman (Apr. 10, 2019), *available at* https://mcusercontent.com/6f30dcabca324361c55ad7aa4/files/619ece53-6a6c-c7a3-7497-8d60576281ca/2_Kristin_Fan_Email_4.27.23.pdf (CMS representative confirms there were "arrangements out there among providers" that CMS "do[es] not particularly like" but *lacks* the "statutory authority to address").

⁴ CMS Press Release (Dec. 6, 2002), *available at* [CMS celebrates MPP.pdf](#).

at the center of the ongoing Florida review.⁵ Disturbingly, while Florida faced scrutiny, states led by Democratic governors, such as California, escaped investigation despite very public accounts detailing that California had the same system of private arrangements.⁶ Indeed, during the same timeframe Florida was under CMS fire, CMS committed a historically large sum to support California Medicaid.⁷

Both *National Review* and *The Wall Street Journal* took note. In *The Wall Street Journal*, former Maryland Governor Hogan observed that Biden Administration political appointees had significant involvement in the audit.⁸ The *National Review* story highlighted CMS emails suggesting the agency was releasing the new policies on a “tight timeline” and that Florida “is the only [state] we have concern on,” even though the agency was “aware that other states have similar hospital arrangements.”⁹

CMS’s attack on Florida paused after Texas took CMS to court over the new guidance. In a preliminary injunction hearing, counsel for CMS acknowledged that the new interpretation was “not codified” in statute.¹⁰ A federal court agreed, enjoining CMS from enforcing the new interpretation that was “distanced” from the statutory text.¹¹ Florida also sued CMS, but a Clinton-appointed judge sidestepped the merits, instead saying no imminent harm threatened the state.¹² CMS seemingly backed down; the agency promised not to take punitive action against states like Texas and Florida until 2028.¹³ But the election of President Trump appeared to restore CMS’s interest in Florida. Within 72 hours of Election Day, CMS informed Florida that more audit

⁵ CMCS Informational Bulletin, “[Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments](#)” (Feb. 17, 2023).

⁶ NEWS Medical Life Sciences, *Feds say hospitals that redistribute Medicaid money violate law* (Aug. 16, 2023), available at <https://www.news-medical.net/news/20230816/Feds-say-hospitals-that-redistribute-Medicaid-money-violate-law.aspx> (detailing the California arrangement).

⁷ See Assembly Bill 119 (Chapter 13, Statutes of 2023) (authorizing a Managed Care Organization (MCO) tax, effective April 1, 2023, through December 31, 2026, estimated to provide \$19.4 billion in net nonfederal funding over the 3.75-year tax period); see also Department of Health Care Services (DHCS), DHCS Press Release, California’s Managed Care Organization (MCO) Receives Federal Approval, available at <https://www.dhcs.ca.gov/formsandpubs/publications/oc/Documents/2024/24-01-MCO-Tax-1-3-24.pdf>.

⁸ Larry Hogan, *How Biden’s CMS Targeted Florida*, WALL ST. J. (Jan. 30, 2024), available at <https://www.wsj.com/articles/how-bidens-cms-targeted-florida-medicare-desantis-bc5dab9c>.

⁹ Ryan Mills, *Biden Health Officials Targeted Red States with Medicaid Program Audits*, NATIONAL REVIEW (Jan. 18, 2024), available at <https://www.nationalreview.com/news/biden-health-officials-targeted-red-states-with-medicare-program-audits/>.

¹⁰ Hearing on Motion for Preliminary Injunction, June 8, 2023, *Texas v. Brooks-LaSure*, 680 F.Supp.3d 791 (E.D. Tex. 2023).

¹¹ *Texas v. Brooks-LaSure*, 680 F.Supp.3d 791, 808 (E.D. Tex. 2023) (citing *Texas v. Brooks-LaSure*, 2022 WL 741065, at 8 (E.D. Tex.) (Mar. 11, 2022)).

¹² *Florida v. Brooks-LaSure*, No. 23-CV-61595-WPD, 2024 WL 962433, at *1 (S.D. Fla. Mar. 6, 2024).

¹³ CMCS Informational Bulletin, [Exercise of Enforcement Discretion until Calendar Year 2028 for Existing Health Care-Related Tax Programs with Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments](#) (Apr. 22, 2024).

questions were imminent. Florida and its hospitals once again face unjustified uncertainty, with the potential to impact over 4.2 million Floridians eligible for Medicaid.¹⁴

CMS email communications betray the political motivations at the heart of the campaign against Florida. According to over 10,000 pages of emails and records obtained by Government Accountability & Oversight,¹⁵ high ranking officials within CMS maintain close relationships with consultants and policy analysts who are outspoken in their disdain for the state. Enclosed you will find further discussion on emails that are particularly concerning.

These interactions are troubling. For years, CMS has gotten away with decision-making based on politically motivated agenda to the detriment of non-expansion states such as Florida and Texas. Yet, even now, CMS has not backed down. As of today, with a late February deadline looming, CMS is attempting to force Florida to accept terms from the troubling Biden-era guidance into the amended Section 1115 waiver state terms and conditions. Our state needs your help to put an end to this politically motivated targeting. A Trump-appointed judge has already stated that the Biden-era guidance does not match the law.¹⁶ In doing so, he invoked the logic of another Trump-appointed judge who reached the same conclusion when CMS tried to use the argument in previous litigation.¹⁷ Even CMS counsel conceded the law does not codify the interpretation CMS now advances. The rulings of both federal judges are well reasoned and rooted in the text of the Social Security Act. These jurists wisely concluded that CMS cannot rely on the problematic policy guidance they now invoke against Florida. We implore you to stop CMS's attempt to ignore the federal court's decision.

We respectfully urge your office to intervene. We ask that you direct CMS to accept the Trump administration agenda and to revoke the Biden-era guidance at issue in the Texas and Florida lawsuits. In addition, we ask that you end the ongoing audit of Florida that relies on the Biden-era guidance policies. In the immediate future, we ask that you insist CMS remove any term invoking the same interpretation from Florida's state terms and conditions. Finally, we encourage you to investigate the issues we detail in this letter and to consider whether the public trust given to CMS is best wielded by the bureaucrats now in power: bureaucrats who are cozy with consultants motivated by liberal bias. We would like to respectfully request a meeting with you to discuss the issue at hand and how to foster a productive working relationship between the State of Florida and CMS under President Trump's leadership.

Thank you for your attention to this urgent matter. We are confident that your review will provide clarity and ensure that CMS upholds its responsibility to administer federal programs fairly and without bias.

¹⁴ Appellant's Reply Brief Exh. 1, *Florida Agency for Health Care Administration v. Administrator for the Centers for Medicare & Medicaid Services*, 2024 WL 5137035 (11th Cir. filed Dec. 6, 2024).

¹⁵ Government Accountability & Oversight, FOIA's Emails Suggest More Biden Administration Politicking with Federal Programs (July 16, 2024), available at <https://govoversight.org/updates-foiad-emails-suggest-more-biden-administration-politicking-with-federal-programs-2/>.

¹⁶ *Texas v. Brooks-LaSure*, 680 F.Supp.3d 791, 808 (E.D. Tex. 2023).

¹⁷ *Id.* (quoting *Texas v. Brooks-LaSure*, 2022 WL 741065, at 8 (E.D. Tex.) (Mar. 11, 2022)).

Sincerely,



Neal P. Dunn, M.D.
Member of Congress



Vern Buchanan
Member of Congress



Gus M. Bilirakis
Member of Congress



Kat Cammack
Member of Congress



Laurel M. Lee
Member of Congress



Aaron Bean
Member of Congress



Carlos A. Gimenez
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Mario Díaz-Balart
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