



SUMMARY

In 2023, the Florida Legislature voted unanimously to expand eligibility for Florida KidCare to children in families with income up to 300% of the federal poverty level. The law also called for new premium tiers based upon household income levels. According to legislative estimates, the new law would make affordable healthcare available to more than 50,000 children in Florida. Although the expanded program was supposed to take effect on January 1, 2024, the Agency for Health Care Administration (AHCA) did not begin to seek necessary federal approval for the program until after that date. In the meantime, a new federal law had gone into effect which the Center for Medicare and Medicaid Services (CMS) interpreted as requiring states to provide continuous healthcare coverage for children even when their families missed a premium payment. AHCA disagreed with CMS's interpretation of the new law. In AHCA's application for approval of the KidCare expansion, it requested that this specific continuous coverage requirement be waived for Florida. When CMS did not agree, AHCA filed suit to invalidate CMS's interpretation that states were required to provide continuous coverage when premium payments are not timely made. CMS approved Florida's requested KidCare expansion on December 2, 2024, reiterating that Florida had to comply with the continuous coverage requirement. AHCA did not proceed with implementation but instead pursued litigation. The court dismissed Florida's initial suit due to lack of jurisdiction. The state brought a second suit challenging CMS's interpretation of the underlying federal law, which by then had been adopted in federal regulations. The second suit is currently stayed indefinitely, while the parties "explor[e] other avenues that may obviate the need for further litigation."

As of now, although Florida's federal waiver requesting to expand KidCare has been approved by CMS, Florida has taken no public steps toward implementing this expansion. And Florida continues to violate federal regulations by disenrolling children from subsidized KidCare coverage when their families miss a premium payment.

BACKGROUND

- Florida KidCare is a federally-subsidized Children's Health Insurance Program (CHIP) available to children with families whose incomes are above the eligibility limit for Medicaid (138% or 145%, depending upon age), up to 200% of the federal poverty level (FPL).
- The federal government match for Florida's CHIP program is approximately 72%.
- In the subsidized KidCare program, families pay a monthly premium of \$15 or \$20 based upon their income level.
- In the subsidized KidCare program, children with chronic and serious conditions requiring health care and services beyond those generally required are eligible to enroll in the Florida's Children's Medical Services (Florida CMS) plan specifically designed to meet their needs.
- Families with incomes above 200% of FPL may enroll in the "full-pay" KidCare program with a monthly premium of approximately \$250.
- There is no federal match for the full-pay KidCare program.
- Children enrolled in the full-pay KidCare program are not eligible to enroll in the Florida CMS plan, regardless of the severity of their medical conditions.
- Children enrolled in both the subsidized and full-pay programs whose families do not pay their monthly premium on time are disenrolled from coverage, and are not eligible for reinstatement for a minimum of 30 days. (CHIP State Plan at p. 97; Fla. Stat. s. 409.8132(8)).
- According to the most recent data, Florida disenrolled 43,236 children from subsidized CHIP at some point during the last year – over 17% of those enrolled - for not paying their premium on time. About 60% of these 43,236 children re-enrolled, whereas 40% did not.



TIMELINE

Events related to implementation of HB 121 (2023)

Events related to continuous eligibility requirement

DATE	ENTITY	ACTION
December 2022	Congress	Passed the <u>Consolidated Appropriations Act (CAA)</u> of 2023. Section 5112 of this Act requires that all state Medicaid and CHIP programs provide 12 months of continuous eligibility to all children under age 19, with limited exceptions, to be effective January 1, 2024.
May 2023	Florida Legislature	Unanimously passed a bill to expand the income eligibility limit for enrollment in subsidized KidCare from 200% of the FPL to 300% (HB 121), and implement a tiered premium structure. These changes were to be effective January 1, 2024. The <u>legislative analysis</u> for this bill stated that there were 8,610 children currently enrolled in the full-pay program and 42,073 currently uninsured children who would become eligible for the subsidized program under the new law. (p. 5,6)
June 2023	Florida Governor	Signed HB 121 into law.
Sept./Oct. 2023	CMS	<p>On September 29, 2024, issued SHO Letter #23-004 providing guidance on implementation of the 12 month continuous eligibility requirement effective 1/1/24 under the 2023 CAA. CMS stated it was still assessing “how non-payment of premiums intersects with [continuous eligibility] under the CAA [and] intend[s] to issue separate guidance on this topic.” (Footnote 14).</p> <p>On October 27, 2023, issued a FAQ document titled “<u>Mandatory Continuous Eligibility for Children in Medicaid and CHIP.</u>” In this document CMS stated that beginning January 1, 2024, states cannot terminate CHIP coverage during a continuous eligibility period due to non-payment of premiums. It further required states that currently treat nonpayment of premiums as an exception to continuous eligibility in CHIP to submit an amendment to their CHIP state plan to come into compliance with federal law.</p>
January 2024	AHCA	Issued a <u>notice</u> in the Florida Administrative Register stating an intention to submit a Title XXI Section 1115 demonstration to CMS to raise the income eligibility in the CHIP program to 300% of FPL, with premium requirements. The notice invited public comments and announced two public hearings, January 31, 2024 in Tallahassee and February 1, 2024 in Orlando.
February 1, 2024	State of Florida/ AHCA	<u>Filed suit</u> against CMS/HHS in the Middle District of Florida, alleging that CMS’s interpretation of the continuous eligibility requirements as applied to non-payment of CHIP premiums as set forth in the FAQ document was contrary to the 2023 CAA. (Fla. v. CMS, Case No. 8:24-cv-317, M.D. Fla.) In a declaration filed in support of the complaint, an AHCA representative stated Florida anticipated compliance with CMS’s interpretation of the 2023 CAA would cost approximately \$1 million per month. (<u>Exhibit 1</u> , Declaration of A. Noll ¶ 10)

Timeline Continued on Next Page



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DATE	ENTITY	ACTION
February 23, 2024	Governor/AHCA	Submitted its <u>Section 1115 Research Demonstration waiver request</u> to CMS offering CHIP eligibility up to 300% of FPL, “with enrollment subject to monthly premiums.” The waiver also expressly requested authority to implement a monthly premium structure for CHIP enrollees with incomes between 133 and 300 percent of the FPL “as a condition of enrollment.” (Table 6).
March 8, 2024	CMS	<u>Notified Florida</u> that its waiver application was incomplete due to failure to include historic enrollment and expenditure data, current enrollment data, and a detailed description of the comments received during the public comment period.
March 8, 2024	Florida Legislature	Passed legislation stating that implementation of the KidCare expansion in HB 121 (2023) “is contingent upon federal approval through a Medicaid waiver or a state plan amendment.” <u>Senate Bill 2518</u> , Section 5.
March 20, 2024	AHCA	Resubmitted its <u>Section 1115 Demonstration waiver request</u> with the additional information requested by CMS.
March 28, 2024	CMS	<u>Notified Florida</u> that its resubmitted waiver application was complete.
May 31, 2024	Court (M.D. Fla)	Dismissed Florida’s suit against CMS/HHS, finding that because federal law provided a valid and comprehensive review process for review of federal agency action, the court lacked subject matter jurisdiction to determine Florida’s claims. (<u>Dkt. 32</u>)
June 12, 2024	Florida Governor	Signed HB SB 2518 into law.
July 8, 2024	Florida/AHCA	Appealed the dismissal of its lawsuit to the Eleventh Circuit. Case No. 24-12217
July 22, 2024	CMS	Published a Proposed Rule to revise CHIP regulations to codify the requirement within the CAA, 2023 to require States to provide 12 months of continuous eligibility to children under the age of 19 in CHIP, with limited exceptions. The proposed rule would remove the option to disenroll children from CHIP during a continuous eligibility period for failure to pay premiums. (<u>89 Fed. Reg. 59487</u> , 59487-59488).
Sept. 9, 2024	AHCA	Submitted <u>comments</u> to CMS opposing the proposed regulatory changes requiring continuous CHIP enrollment in the event of a failure to pay premiums.

Timeline Continued on Next Page



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DATE	ENTITY	ACTION
Nov. 27, 2024	CMS	Published a Final Rule revising 42 C.F.R. §§ 435.926 and 457.342, requiring states to provide 12 months of continuous eligibility to CHIP enrollees, and rescinding 42 C.F.R. 457.342(b) which had permitted states to disenroll CHIP participants for non-payment of premiums during periods of continuous eligibility. (89 Fed. Reg. 93912, 94462-67). These regulatory changes were to be effective January 1, 2025.
Dec. 2, 2024	CMS	<u>Approved</u> Florida's Section 1115 Demonstration waiver request, assigned Project Number 21-W-00076/4, with certain modifications, effective December 2, 2024 through September 30, 2029. The approval authorized four premium levels for enrollees in the expanded population (the request had sought to impose new premium levels for all CHIP enrollees). The approval also reiterated the requirement in the 2023 CAA to provide 12 months of continuous eligibility, even in the event of nonpayment of premiums. The approval required written acknowledgement of the award and acceptance of the Special Terms and Conditions (STCs) within 30 days.
Dec. 13, 2024	State of Florida/ AHCA & CMS	Jointly <u>moved to dismiss the appeal</u> (11th Circuit) and vacate the trial court's decision below on the grounds that the recently finalized federal rule superseded the FAQs challenged in the case.
Dec. 30, 2024	AHCA	<u>Requested an extension</u> of the 30-day deadline to accept the STCs, at least until February 1, 2025, to "allow the Agency to work closely with the new Administration to navigate this critical initiative effectively." The letter asserted CMS had "delay[ed] implementation by adding your own conditions outside [the] submission's scope" and that "the incoming Administration must have the opportunity to determine the program's terms and conditions."
Dec. 31, 2024	CMS	<u>Granted an extension</u> , but only until January 15, 2025, for AHCA to respond to CMS's December 2, 2024 letter. CMS declined to reconsider the portion of the STCs addressing the question of disenrollment of the expanded CHIP population for nonpayment premiums
Jan. 1, 2025	CMS	Effective date for regulatory amendments relating to continuous eligibility published on Nov. 27, 2024.

Timeline Continued on Next Page



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DATE	ENTITY	ACTION
Jan. 2, 2025	CMS	<u>Notified Florida</u> its CHIP state plan is not in compliance with federal law and regulations prohibiting disenrollment of children from CHIP for nonpayment of premiums during a continuous eligibility period. Directed Florida to respond within 30 days with a corrective action plan to comply. “States that are not in compliance with federal regulations are subject to further compliance action, including potential withholding of federal funds, in accordance with the procedures outlined in 42 C.F.R. 457.204 and 457.206.”
Jan. 7, 2025	State of Florida/ AHCA	Filed a <u>second lawsuit</u> against CMS in the Middle District of Florida, alleging that the revised regulations prohibiting states from disenrolling participants in CHIP due to nonpayment of premiums during a period of continuous eligibility are contrary to the provisions of the 2023 CAA. Plaintiffs ask the court to declare the revised regulations unlawful and enjoin CMS from enforcing them. (Case No. 8:25-cv-36)
Jan. 15, 2025	AHCA	AHCA <u>accepted the STCs</u> with a <u>proposed modification</u> to remove the requirement in ¶ 5.2 (p. 10) that “Individuals may not be disenrolled from this demonstration for failure to pay the monthly premium during the individual’s 12-month continuous eligibility period.”
Jan. 17, 2025	CMS	<u>Declined Florida’s requested modification</u> because it does not comply with the governing statute and implementing regulations, citing Sections 1902(e) (12) and 2107(e)(1)(K) of the Social Security Act, as amended by the Consolidated Appropriations Act, 2023 and 42 CFR 435.926 and 457.342. These authorities “make clear that failure to pay premiums is not a permissible exception to continuous eligibility for children.”
Feb. 20, 2025	Court (11th Circuit)	<u>Dismissed appeal</u> as moot and vacated district court judgment.
March 21, 2025	CMS	Filed a motion to stay in second suit (in M.D. Fla.) “to allow incoming leadership personnel at [HHS] additional time to evaluate their position in this case and determine how best to proceed.” The State of Florida/AHCA consented to this request. (Dkt. 15)
May 21, 2025	CMS	Filed a second motion to stay the case (in M.D. Fla.) to allow incoming leadership at HHS additional time to evaluate their position in the case and determine how best to proceed. The State of Florida/AHCA consented to this request. (Dkt. 25)

Timeline Continued on Next Page



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DATE	ENTITY	ACTION
June 25, 2025	CMS	<u>Issued Monitoring Redesign Overlay Letter</u> to Florida for Project 21-W-00076/4 which makes changes to the reporting format, frequency and timing of reports, and timing and content of monitoring calls. There are no changes to the STCs, including ¶ 3.2 requiring general compliance with CHIP regulations and ¶ 5.2 specifically prohibiting disenrollment from the demonstration for failure to pay a premium during the 12-month continuous eligibility period. The approval period remains December 2, 2024 through September 30, 2029.
June 25, 2025	Court (M.D. Fla.)	Granted the motion to stay. The case is stayed until Sept. 12, 2025. On or before that date the parties must inform the court of the status of the case and their intent to continue litigation. (Dkt. 26)
Sept. 12, 2025	CMS	Filed a response to the Court's July 15 order (in M.D. Fla.), stating in pertinent part: "[T]he parties hereby report that leadership personnel at the Department of Health and Human Services are still determining how they wish to proceed. The parties are also currently exploring other avenues that may obviate the need for further litigation. Accordingly, the parties respectfully request that the matter remain administratively closed." The State of Florida/AHCA consented to the filing. (Dkt. 27)

For questions, please contact Lynn Hearn, hearn@floridahealthjustice.org