

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CHIANNE D., *et al.*,

Plaintiffs,

v.

JASON WEIDA, in his official capacity
as Secretary for the Florida Agency for
Health Care Administration, and
SHEVAUN HARRIS, in her official
capacity as Secretary for the Florida
Department of Children and Families,

Defendants.

NO. 3:23-CV-985-MMH-LLL

**THE AMERICAN PUBLIC HEALTH ASSOCIATION AND 102 DEANS,
CHAIRS, AND PUBLIC HEALTH AND HEALTH POLICY SCHOLARS’
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF
PLAINTIFFS’ POSITION AT TRIAL**

The American Public Health Association (APHA) respectfully moves for leave to file a brief as amicus curiae (the “Brief”) in support of Plaintiffs’ position at trial. Plaintiffs seek a declaratory judgment, in accordance with 28 § U.S.C. 2201 and Fed. R. Civ. P. 57, declaring that Defendants’ standardized notices communicating Medicaid ineligibility violated and continue to violate Plaintiffs’ rights under the Due Process Clause of the Fourteenth Amendment and the Medicaid Act, 42 U.S.C. § 1396a(a)(3). Amici’s proposed brief is attached as Exhibit A.

INTERESTS OF MOVANTS

The APHA champions the health of all people and all communities; strengthens the profession of public health; shares the latest research and information; promotes best practices; and advocates for public health issues and policies grounded in scientific research. APHA represents more than 22,000 individual members and is the only organization that combines a 150-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health.

APHA has a direct interest in supporting the Plaintiffs' position at trial because its members are deans, chairs, and scholars at the Nation's leading academic institutions and research universities. They are experts in the fields of health law, public health, health care policy and research, and national health reform. In their academic research, scholarship, and professional experiences, *amici* have analyzed Medicaid's role as the Nation's leading health insurer for millions of vulnerable pregnant women, children, people with disabilities, and other individuals who face systemic barriers to essential health care services and treatments.

ARGUMENT

District courts have broad discretion to determine whether *amici* may participate in a proceeding and have allowed such participation when "third parties can contribute to the court's understanding of the matter in question." *E.g., Conservancy of Sw. Fla. v. U.S. Fish & Wildlife Serv.*, 2010 WL 3603276, at *1 (M.D. Fla. Sept. 9, 2010).

Although the Federal Rules of Civil Procedure do not specifically address the filing of amicus curiae briefs at the district court level, "district courts possess the

inherent authority to appoint ‘friends of the court’ to assist in their proceedings.” *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006); *see Lefebure v. D’Aquila*, 15 F.4th 670, 674-76 (5th Cir. 2021) (finding “strong (but fair) advocacy on behalf of opposing views promotes sound decision making,” courts would be “well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not [state their interest in the case]”).

In determining whether to grant leave to file an amicus curiae brief, judges of this Court have considered: (1) amici’s experience and qualifications; (2) the relevance of the amicus curiae brief to the matter; (3) whether the case is of “general public interest”; (4) whether the case is of “particular interest to the [amici]”; and (5) whether the “case concerns constitutional rights.” Order Granting Motion to Appear as Amicus Curiae 2, *Madera v. Detzner*, No. 1:18-cv-152-MW/GRJ (N.D. Fla. Aug. 23, 2018), ECF No. 31 (Walker, C.J.); *see* Order Granting Motion for Leave to File Amicus Brief, *M.A., et al. v. Fla. State Bd. of Educ., et al.*, No. 4:22-cv-134-AW-MJF (N.D. Fla. Dec. 23, 2022), ECF No. 147 (Winsor, J.).

The Court should grant APHA’s request to submit the enclosed Brief based on the Court’s balancing of the equities in considering Plaintiffs’ position at trial. This Brief provides the Court with the unique perspectives of Florida’s Medicaid beneficiaries, some of the poorest and most vulnerable Americans, who stand to lose

essential medical care that would otherwise be impossible to access.¹ Further, the Brief provides the Court with important context of the due process protections afforded to individuals receiving benefits from entitlement programs such as Medicaid, which are designed to serve populations facing brutal needs. Specifically, this brief explores the history of these fundamental safeguards, how they have become enshrined in constitutional and federal Medicaid law, and the nature of the protections they guarantee against the improper and unlawful reduction and termination of assistance for which people remain eligible. The brief finally examines the healthcare implications that flow when Florida improperly and erroneously terminates access to vital health insurance coverage.

CONCLUSION

For the foregoing reasons, the Court should grant leave to file the attached Brief as amicus curiae.

Respectfully submitted,

Dated: April 5, 2024

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¹ *Medicaid Eligibility*, MEDICAID.GOV , <https://www.medicaid.gov/medicaid/eligibility/index.html#:~:text=Medicaid%20is%20the%20single%20largest,cover%20certain%20groups%20of%20individuals> (last visited Mar. 27, 2024).

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Local Rule 3.01(g) Certification

Counsel for *amici* has conferred with both Plaintiffs' and Defendants' counsel regarding the filing of their *amicus* brief by email on April 1, 2024. Plaintiffs' counsel stated they do not oppose this motion. Defendants' counsel, through a series of email exchanges on April 1, 2024, indicated they do oppose this motion.

Dated: April 5, 2024

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CERTIFICATE OF SERVICE

I, Madeleine K. Rodriguez, hereby certify that on April 5, 2024, I caused the foregoing to be filed with the Clerk of Court for the United States District Court for the Northern District of Florida by using the CM/ECF system (NextGen). I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 5, 2024

/s/Madeline K. Rodriguez

Madeleine K. Rodriguez

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 7.1(a) of the Federal Rules of Civil Procedure and Rule 3.03 of the Local Rules of the Middle District of Florida, *amici curiae* submit the following corporate disclosure statements:

The American Public Health Association is a professional association. It is not publicly traded and has no parent corporation. No publicly held corporation owns 10% or more of its stock.

The Deans, Chairs, and Scholars are individuals and as such do not have a parent company and no publicly held company has a 10% or greater ownership interest in any *amici*.

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INTEREST OF AMICI CURIAE

The American Public Health Association (APHA) champions the health of all people and all communities; strengthens the profession of public health; shares the latest research and information; promotes best practices; and advocates for public health issues and policies grounded in scientific research. APHA represents more than 22,000 individual members and is the only organization that combines a 150-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health.

The 102 individual *amici* are deans, chairs, and scholars at the Nation's leading academic institutions and research universities. They are experts in the fields of health law, public health, health care policy and research, and national health reform. In their academic research, scholarship, and professional experiences, *amici* have analyzed Medicaid's role as the Nation's leading health insurer for millions of vulnerable pregnant women, children, people with disabilities, and other individuals who face systemic barriers to essential health care services. The full list of individual *amici*, all of whom are appearing in their individual capacities, is printed in an appendix to this brief. See App. *infra*.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Medicaid provides health coverage to tens of millions of the poorest and most vulnerable Americans. It was created as a cooperative venture funded by the federal and state governments to assist states in providing medical assistance to people whose incomes and resources are insufficient to pay the cost of necessary medical care.

Medicaid is the largest public health insurance program and the most important source of funding for essential medical care for people whose health needs and life circumstances would otherwise render access to care impossible.¹ Further, Medicaid is one of the largest payers in the U.S. healthcare system, accounting for 18% of national healthcare spending and covering 18.8% of Americans.² In Florida, only low-income children, parents, pregnant people, seniors, and individuals with disabilities are eligible for Medicaid. Despite Florida's very low-income eligibility limits, Medicaid covers nearly 20% of the state's total population.³

Even though Florida restricts its Medicaid program to only the poorest people—those most susceptible to forgoing necessary care should Florida terminate their coverage—Florida does not implement constitutionally sufficient safeguards to protect against erroneous terminations. Specifically, Florida's termination notices use only generic templates, do not clearly state that benefits are being terminated, fail to detail the legal and factual bases for terminations, and do not clearly explain how to request a hearing. These failures violate Florida Medicaid enrollees' constitutional and statutory due process rights.

¹ *Medicaid Eligibility*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/eligibility/index.html#:~:text=Medicaid%20is%20the%20single%20largest,cover%20certain%20groups%20of%20individuals> (last visited Mar. 27, 2024).

² *National Health Expenditures 2022 Highlights*, CMS (Dec. 13, 2023), <https://www.cms.gov/newsroom/fact-sheets/national-health-expenditures-2022-highlights>; Keisler-Starkey at al., *Health Insurance Coverage in the United States: 2022*, CENSUS.GOV (Sept. 12, 2023), <https://www.census.gov/library/publications/2023/demo/p60-281.html>.

³ *Medicaid in Florida*, KFF (June 29, 2023), <https://files.kff.org/attachment/fact-sheet-medicaid-state-FL>.

This brief discusses the due process protections afforded to individuals receiving benefits from entitlement programs such as Medicaid, which are designed to serve people facing brutal needs. The brief includes the history of these fundamental safeguards, how they have become enshrined in constitutional and federal Medicaid law, and the nature of the protections they guarantee against the unlawful termination of assistance for which people remain eligible. The brief further examines the adverse health implications of Florida's erroneous termination of people's access to vital health insurance coverage.

ARGUMENT

I. Due Process Requires States to Provide Adequate Notice Before Terminating Essential Healthcare Coverage Provided to People in Brutal Need of Medical Assistance.

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the Supreme Court announced that the Due Process Clause of the U.S. Constitution requires heightened protections before terminating government benefits provided to people facing a “brutal need” for assistance. *Id.* at 261. Specifically, the Court held that such individuals are entitled to pre-termination notice and a hearing. *Id.* at 266. The *Goldberg* plaintiffs were determined to be in “brutal need” because they were “destitute” and “without funds or assets” to obtain “essential food, clothing, housing, and medical care.” *Id.* at 261, 264. The Court reasoned that these plaintiffs were entitled to heightened due process protections because:

[T]ermination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately

desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress *Goldberg*, 397 U.S. at 264.

The Court further held that due process requires timely and adequate notice detailing the state’s reasons for termination. *Id.* at 268. The Court reasoned that such notice was particularly important to enable enrollees to determine whether to challenge the state’s termination of benefits based on incorrect factual premises, or misapplication of rules to the facts of their individual case. *Id.* These notices are important because they allow individuals to understand why the state reached its decision. Due process requires these essential safeguards because, fundamentally, hearings must be conducted in a “meaningful manner,” and if enrollees cannot understand in clear, detailed terms why their benefits are being terminated, they will not have a meaningful opportunity to decide whether to appeal and to prepare for a hearing. *See id.*

For decades, federal courts have applied the *Goldberg* standard to Medicaid. *See, e.g., Ortiz v. Eichler*, 794 F.2d 889, 892–93 (3rd Cir. 1986) (holding that pre-hearing notice must detail for each enrollee comprehensible reasons for Medicaid termination (among other benefits)); *Haymons v. Williams*, 795 F. Supp. 1511, 1524 (M.D. Fla. 1992) (finding Medicaid beneficiary plaintiffs entitled to notice and hearing provisions outlined in *Goldberg* on due process grounds); *Silvey v. Roberts*, 363 F. Supp. 1006, 1012 (M.D. Fla. 1973) (opening “to grave [constitutional] doubt” Florida official’s reduction of Medicaid payments for medicine prescribed to bedridden plaintiff with rheumatoid arthritis); *Crawley v. Ahmed*, No. 14040, 2009 U.S. Dist. LEXIS 40794, at

*81 (E.D. Mich. May 14, 2009) (granting preliminary injunction where plaintiffs asserted inadequate notice in part because Medicaid coverage is a “vital necessity” and a “controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits.”); *see also Owens v. Roberts*, 377 F. Supp. 45, 49, 51-52 (M.D. Fla. 1974) (holding that “lack of an adequate explanation [for benefits termination] results in automatic exclusion from eligibility” of individuals who are “elderly, disabled, unemployed and unemployable, and plainly impoverished” in violation of due process). These post-*Goldberg* cases confirm that Medicaid enrollees have a “brutal need” for the medical assistance to which they are entitled under federal law and for whom provision has been made in a state’s Medicaid plan. The *Goldberg* standard compels clear, detailed termination notice to ensure that enrollees understand the reasons why their coverage is at risk, how to request an administrative hearing if they believe they are still eligible, their rights at a hearing, and the fact that if a hearing is requested timely, no further action will be taken to terminate coverage until a final hearing decision is reached. Timely, adequate notice is, thereby, the essential foundation on which *Goldberg* rests.

Even prior to the Supreme Court’s ruling in *Goldberg*, the federal government had established due process protections in Medicaid, which, from its original enactment, was understood to be a program for the nation’s poorest and most vulnerable people. *See* 42 U.S.C. § 1396a(a)(3) (1965) (codifying Medicaid enrollees’ right to a fair hearing when assistance is denied or reduced or terminated). Policy guidance issued in 1966 by the U.S. Department of Health, Education, and Welfare

(“HEW”) in the immediate wake of Medicaid’s enactment clarified states’ obligations to furnish enrollees with a fair hearing when facing the potential termination of coverage and made state agencies responsible for administering fair hearings in accordance with due process standards.⁴ *Goldberg* would follow this due process theme four years later while clarifying the extent of the fair hearing protections that govern programs addressing Americans’ brutal needs; these protections necessarily compel timely and adequate notice regarding these protections. *Goldberg*, 397 U.S. at 267-68. Thus, from the program’s earliest days, the federal government recognized that Medicaid supports individuals who, without this coverage, would be unable to afford essential medical care, and therefore requires procedural protections grounded in due process to guard against erroneous coverage loss.

After *Goldberg*, successive administrations specifically incorporated the Supreme Court’s holding into the Medicaid program. In 1971 and 1979, HEW promulgated regulations that required states to adhere to due process requirements in administering Medicaid benefits with explicit reference to the *Goldberg* standard. *See* 45 C.F.R. § 205.10(a)(1)(ii) (1971) (“[H]earings shall meet the due process standards set forth in the U.S. Supreme Court decision in *Goldberg v. Kelly*”) (citations omitted); 45 C.F.R. § 431.202(d) (1979) (“The hearing system must meet the due process standards set forth in *Goldberg v. Kelly*”). From its initial implementation

⁴ U.S. DEP’T OF HEALTH, EDUC., & WELFARE, HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION SUPPLEMENT D: MEDICAL ASSISTANCE PROGRAMS UNDER TITLE XIX OF THE SOCIAL SECURITY ACT D-6540-P.3 (1966).

of *Goldberg*, the federal government has viewed Medicaid enrollees as individuals who have a “brutal need” for the essential healthcare coverage that Medicaid offers, and to whom *Goldberg*’s protections apply. These due process protections, incorporated into federal regulations in the 1970s, remain unchanged today. Indeed, the current iteration of CMS’s regulations include almost identical language as HEW did 50 years ago. *See* 45 C.F.R. § 205.10(a)(1)(ii) (2024) (“Under this requirement hearings shall meet the standards set forth in the U.S. Supreme Court decision in *Goldberg v. Kelly* . . .”).

However, despite the due process foundation on which Medicaid has long rested, as well as extensive, clear federal directives regarding states’ obligations to adhere to this foundation, Florida has chosen to disregard its obligations by employing unreadable, incomprehensible termination notices whose meaning is inaccessible even to highly educated readers and that fail to convey basic due process information required under both the Constitution and federal law. *See infra* Section II(C).

II. Florida’s Due Process Violations Harm Its Most Vulnerable Residents.

A. Florida’s Medicaid program covers the very poorest children, parents, pregnant people, seniors, and people with disabilities.

Despite the program’s very low income limits, nearly one in five Floridians is enrolled in Florida’s Medicaid program.⁵ Forty-nine percent of enrollees are children, while 30% are seniors and people with disabilities, and the remaining 21% are pregnant

⁵ *Medicaid in Florida*, KFF (June 29, 2023), <https://files.kff.org/attachment/fact-sheet-medicaid-state-FL>.

people or low-income parents.⁶ Notably, these statistics do not include childless adults because there is no pathway to Medicaid coverage for a single adult without dependent children, no matter how poor, in Florida, as one of the remaining ten states that has not adopted the Affordable Care Act's⁷ Medicaid expansion.⁸

Each Florida Medicaid enrollee is likely to be one of the neediest individuals in the state. Because Florida maintains some of the nation's strictest Medicaid eligibility limits, its enrollees are exceptionally poor. Even in Florida's most "generous" eligibility category—children—those living in families with income exceeding 215% of the federal poverty level (\$53,449 annually for a family of three) cannot qualify for Medicaid or its companion Children's Health Insurance Program (CHIP).⁹ Unsurprisingly, given their low family incomes, nearly one-quarter (24%) of Florida families with children covered by Medicaid/CHIP report that it is somewhat or very often hard to meet basic needs like food and housing.¹⁰

⁶ *Medicaid is Critical for Florida Families*, GEORGETOWN UNIV. MCCOURT SCH. OF PUB. POL'Y CTR. FOR CHILDREN & FAMILIES (Sept. 2023), https://ccf.georgetown.edu/wp-content/uploads/2023/09/Medicaid101_FL.pdf.

⁷ Pub. L. No. 111-148 § 2001 *et. seq.*, 124 Stat. 119, 271 - 79 (2010).

⁸ Tricia Brooks et al., *Medicaid and CHIP Eligibility, Enrollment, and Renewal Policies as States Prepare for the*

Unwinding of the Pandemic-Era Continuous Enrollment Provision, KFF (April 4, 2023), <https://www.kff.org/medicaid/report/medicaid-and-chip-eligibility-enrollment-and-renewal-policies-as-states-prepare-for-the-unwinding-of-the-pandemic-era-continuous-enrollment-provision/>.

⁹ Based on the federal poverty level of \$24,860 for a family of three. *Medicaid in Florida*, KFF (June 29, 2023), <https://files.kff.org/attachment/fact-sheet-medicaid-state-FL>.

¹⁰ Child and Adolescent Health Measurement Initiative, 2019-2020 National Survey of Children's Health (NSCH), <https://www.childhealthdata.org/browse/survey/results?q=8756&r=11&g=928> (Retrieved 11/16/23).

However low the income limit for children may seem, it is generous compared to eligibility for parents of minor children. Florida maintains the nation's third lowest income limit for parents, just 28% of the federal poverty level¹¹ (\$6,960.80 annually for a family of three).¹² Only Alabama and Texas maintain lower Medicaid income limits for parents.¹³ Yet, over one third of working Medicaid enrollees report their health is "fair" or "poor,"¹⁴ and their employment in low wage jobs (over 60% of nonelderly enrollees are employed) makes access to workplace health benefits a virtual impossibility.¹⁵

While Florida's income limits are relatively higher for certain adults who are more likely to have higher medical costs—pregnant people, seniors, and people with disabilities—these limits are still staggeringly low. For example, seniors and people

¹¹ Tricia Brooks et al., *Medicaid and CHIP Eligibility, Enrollment, and Renewal Policies as States Prepare for the Unwinding of the Pandemic-Era Continuous Enrollment Provision*, KFF (April 4, 2023), <https://www.kff.org/medicaid/report/medicaid-and-chip-eligibility-enrollment-and-renewal-policies-as-states-prepare-for-the-unwinding-of-the-pandemic-era-continuous-enrollment-provision/>.

¹² *Medicaid in Florida*, KFF (June 29, 2023), <https://files.kff.org/attachment/fact-sheet-medicaid-state-FL>

¹³ Tricia Brooks et al., *Medicaid and CHIP Eligibility, Enrollment, and Renewal Policies as States Prepare for the Unwinding of the Pandemic-Era Continuous Enrollment Provision*, KFF (April 4, 2023), <https://www.kff.org/medicaid/report/medicaid-and-chip-eligibility-enrollment-and-renewal-policies-as-states-prepare-for-the-unwinding-of-the-pandemic-era-continuous-enrollment-provision/>.

¹⁴ Amaya Diana, et al., *A Look at Navigating the Health Care System: Medicaid Consumer Perspectives*, KFF (Nov. 27, 2023), [https://www.kff.org/medicaid/issue-brief/a-look-at-navigating-the-health-care-system-medicaid-consumer-perspectives/#:~:text=About%20one%2Dthird%20\(32%25\),or%20employer%2Dsponsored%20insurance%20\(ESI](https://www.kff.org/medicaid/issue-brief/a-look-at-navigating-the-health-care-system-medicaid-consumer-perspectives/#:~:text=About%20one%2Dthird%20(32%25),or%20employer%2Dsponsored%20insurance%20(ESI).

¹⁵ *Lower-wage workers less likely than other workers to have medical care benefits in 2019*, U.S. BUREAU OF LABOR STATS. (Mar. 3. 2020), <https://www.bls.gov/opub/ted/2020/lower-wage-workers-less-likely-than-other-workers-to-have-medical-care-benefits-in-2019.htm>; *Medicaid in Florida*, KFF (June 29, 2023), <https://files.kff.org/attachment/fact-sheet-medicaid-state-FL>

with disabilities are eligible for Florida Medicaid only if their income is below 88% of the federal poverty level, just \$12,830.40 annually for an individual.¹⁶ Pregnant women cannot qualify for Medicaid if their income exceeds 196% of the federal poverty level (\$48,725.60 annually for a family of three).¹⁷

B. Florida Medicaid enrollees are some of the most vulnerable populations in the state.

While poverty is an essential requirement of Florida Medicaid, enrollees also must belong to a vulnerable population, such as pregnant people, children, seniors, and people with disabilities. The nature of these populations, when combined with the strict income requirements imposed by Florida Medicaid, place Florida enrollees squarely within the Constitutional “brutal need” framework that merits the highest level of due process given their complete dependence on Medicaid for affordable health coverage.

Maternal health: Medicaid is a major source of coverage during the pregnancy and postpartum period, when the risk of maternal mortality is highest.¹⁸ In 2022, Medicaid financed nearly half (44%) of all Florida births, nearly 98,000.¹⁹ Medicaid’s

¹⁶ Based on the federal poverty level of \$14,580 for an individual. *Medicaid in Florida*, KFF (June 29, 2023), <https://files.kff.org/attachment/fact-sheet-medicaid-state-FL>

¹⁷ *Id.*

¹⁸ Dol J, Hughes B, Bonet M, et al. Timing of maternal mortality and severe morbidity during the postpartum period: a systematic review, JBI EVID SYNTH. (2022); Mitchell, K.A., Haddock, et. al., *Care of the postpartum patient in the emergency department: a systematic review with implications for maternal mortality*. AMERICAN JOURNAL OF PERINATOLOGY, 40(05) 489-507 (2023).

¹⁹ *Births Financed by Medicaid*, KFF, <https://www.kff.org/medicaid/state-indicator/births-financed-by-medicaid/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Mar. 8, 2024).

importance for low income pregnancy care is especially high; in 2022, Medicaid covered over three quarters of pregnant people with annual incomes below \$48,000.²⁰ Among low income pregnant people, young mothers were especially reliant on Medicaid: Florida Medicaid insured 87.9% of pregnant people under the age of twenty and 71.5% aged twenty through twenty-four.²¹

Children. Not only does Florida's Medicaid program cover a significant number of children in the state, but the children it covers are among the state's neediest. These include children in foster care (99% of all such children) as well as nearly half (46%) of all infants, toddlers, and preschoolers in the state.²² A majority (51%) of Florida children with Medicaid have disabilities that qualify them for a special education plan.^{23,24} Florida Medicaid children also live in environments with elevated social risks: they are five times as likely to have witnessed domestic violence²⁵ and twice as

²⁰ *FLHealthCharts: Overview*, FLA. DEP'T OF HEALTH, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=PRAMS.Overview> (last visited Mar. 8, 2024).

²¹ *Id.*

²² *State Medicaid and CHIP Snapshots, 2023*, GEORGETOWN UNIV. MCCOURT SCH. OF PUB. POL'Y CTR. FOR CHILDREN & FAMILIES (Sept. 28, 2023), <https://ccf.georgetown.edu/2023/09/28/state-medicaid-chip-snapshots-2023/>.

²³ Elizabeth Williams & MaryBeth Musumeci, *The Intersection of Medicaid, Special Education Service Delivery, and the COVID-19 Pandemic*, KFF (Jan. 21, 2022), <https://www.kff.org/report-section/the-intersection-of-medicaid-special-education-service-delivery-and-the-covid-19-pandemic-appendices/>.

²⁴ Children qualify for special education services based on intellectual disability, orthopedic impairment, speech language impairment, and other reasons. *See* 34 C.F.R. § 300.8(a).

²⁵ Child and Adolescent Health Measurement Initiative. 2019-2020 National Survey of Children's Health (NSCH) data query. Data Resource Center for Child and Adolescent Health supported by the U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau (MCHB). Retrieved 11/16/23 from <https://www.childhealthdata.org/browse/survey/results?q=8760&r=11&g=928>

likely to have had two or more adverse childhood experiences²⁶ compared to those with private insurance.²⁷ The same factors associated with Medicaid eligibility in Florida—low family income coupled with social risks—are also associated with childhood hunger in Florida, which in nearly one-quarter of the state’s counties (16 of 67) affected between 18.1-28.7% of all children.²⁸

In 2019, Medicaid/CHIP insured over half (55%) of all Florida children with special healthcare needs.²⁹ Children with special healthcare needs “have or are at increased risk for a chronic physical, development, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.”³⁰ Nearly 28% of Florida Medicaid children have two or more current or lifelong conditions—such as sickle cell disease, epilepsy, and

²⁶ Adverse childhood experiences include difficulty covering basic needs on the family's income; a parent/guardian who is divorced or separated, deceased, or has spent time in jail; witnessing domestic violence; being a victim of or witnesses neighborhood violence; living with anyone who was mentally ill, suicidal, or severely depressed or had a problem with alcohol or drugs; or being treated or judged unfairly due to race/ethnicity or sexual orientation or gender identity.

²⁷ Child and Adolescent Health Measurement Initiative, *2019-2020 National Survey of Children’s Health (NSCH)*, <https://www.childhealthdata.org/browse/survey/results?q=8755&r=11&g=928> (Retrieved 11/16/23).

²⁸ FLHealthCharts, *Child Food Insecurity Rate* (<https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndRateOnly.Dataviewer&cid=9911>) (last visited Mar. 28, 2024).

²⁹ *Children with Special Health Care Needs: Coverage, Affordability, and HCBS* at Appendix Table 1, KFF (2021), <https://www.kff.org/report-section/children-with-special-health-care-needs-coverage-affordability-and-hcbs-access-appendix/>

³⁰ *NSCH Data Brief: Children and Youth with Special Health Care Needs*, HRSA (2022), <https://mchb.hrsa.gov/sites/default/files/mchb/programs-impact/nhsc-data-brief-children-youth-special-health-care-needs.pdf>.

autism³¹—compared to about 16% of those with private insurance.³² These statistics mirror what is known nationally about the high health vulnerabilities of Medicaid children: Medicaid during childhood is associated with poverty, which in turn is “related to poorer cognitive function, shorter stature, higher serum lead levels, more dental caries, and more severe asthma.”³³

Additionally, nearly 13% of Florida children with Medicaid/CHIP have health conditions that consistently and often greatly affect their daily activities.³⁴ Families of children with Medicaid/CHIP in Florida are nearly twice as likely to report that they have left a job, taken a leave of absence, or cut down on work hours because of their child’s health, compared to those with private insurance (13% vs. 7%).³⁵

Medicaid’s coverage for children is unique as a result of its special “early and periodic screening, diagnostic, and treatment (EPSDT)” benefit, which has no parallel in private insurance³⁶ and ensures access without cost sharing to all medically

³¹ Health Resources and Services Administration, Children and Youth with Special Health Care Needs (CYSHCN), Jan. 2024, <https://mchb.hrsa.gov/programs-impact/focus-areas/children-youth-special-health-care-needs-cyshcn#:~:text=CYSHCN%20have%20or%20are%20at,%2C%20autism%2C%20and%20learning%20disorders>.

³² 2019-2020 National Survey of Children’s Health: Florida, CAHMI, <https://www.childhealthdata.org/browse/survey/results?q=10458&r=1&g=1138> (last visited Mar. 8, 2024).

³³ Hakim RB, et al., *Medicaid and the Health of Children*, HEALTH CARE FINANCING REV. (2000).

³⁴ 2019-2020 National Survey of Children’s Health: Florida, CAHMI, <https://www.childhealthdata.org/browse/survey/results?q=8530&r=11&g=928> (last visited Mar. 8, 2024).

³⁵ Child and Adolescent Health Measurement Initiative, 2019-2020 National Survey of Children’s Health (NSCH), <https://www.childhealthdata.org/browse/survey/results?q=8779&r=11&g=928> (Retrieved 11/16/23).

³⁶ Sara Rosenbaum & Paul H. Wise, *Crossing The Medicaid–Private Insurance Divide: The Case Of EPSDT*, HEALTH AFFAIRS (Mar./Apr. 2007).

necessary care to screen, diagnose, and correct or ameliorate physical, mental, and developmental conditions.³⁷ Courts have been especially sensitive to state policies that unlawfully deprive children of EPSDT coverage. *Garrido v. Dudek*, 731 F.3d 1152, 1154 (11th Cir. 2013) (upholding irreparable harm finding for Florida children who were denied EPSDT).

Elderly people and people with serious disabilities. Florida Medicaid is vital for the state's elderly population, as well as its substantial population of children and adults with the severest disabilities. In 2021, Medicaid financed care for four in seven Florida nursing home residents,³⁸ a vital benefit given the fact that the annual median cost of a semi-private nursing facility room in Florida exceeded \$100,000 that year, while the cost of a year (in 2023) of homemaker or home health aide services exceeded \$67,000.³⁹ Without Medicaid, these services simply are unaffordable to people who need them, surpassing the median incomes of elderly residents.⁴⁰ Medicaid funds most long-term care services because out-of-pocket costs are unaffordable and private insurance and Medicare cover little to no long-term care.⁴¹ Medicaid long term care benefits reflect the advanced needs of these populations and include not only residential care but also

³⁷ Sara Rosenbaum & Kay Johnson, *A Twenty-First Century Medicaid Child Health Policy: Modernizing EPSDT*, MILBANK (July 6, 2023).

³⁸ *Medicaid State Fact Sheets: Medicaid in Florida*, KFF (June 29, 2023), <https://www.kff.org/interactive/medicaid-state-fact-sheets/>.

³⁹ *Cost of Care Survey*, GENWORTH, <https://www.genworth.com/aging-and-you/finances/cost-of-care.html/> (last visited Mar. 8, 2024).

⁴⁰ *Median Household Income*, FL HEALTH CHARTS, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndGrp.Dataviewer&cid=0812> (last accessed Mar. 28, 2024).

⁴¹ Priya Chidambaram & Alice Burns, *10 Things About Long-Term Services and Supports*, KFF (Sept. 15, 2022), <https://www.kff.org/medicaid/issue-brief/10-things-about-long-term-services-and-supports-ltss/>.

care needed to enable children and adults with significant chronic disabilities to live with their families and remain active in their communities, including adult day health care, personal care attendants, group homes, supported employment, and assistive technology.⁴²

All of these services are essential to helping seniors and people with disabilities meet self-care and independent living needs.⁴³ Without Medicaid, these populations would lack access to necessary, life-sustaining care.

C. Florida has failed to make notices accessible to a low health literacy population.

In addition to being some of the poorest individuals in the state, Florida's Medicaid population struggles with general literacy as well as health literacy. This makes Florida's confusing Medicaid termination notices all the more problematic. Specifically, the notices do not clearly say what action Florida is taking, stating at times the enrollee was both eligible and ineligible. *See* Plaintiff's Motion for Preliminary Injunction, Dkt. No. 3 at 8 ("Pl. PI Mot."). The notices do not detail "the legal and factual bases" of Florida's termination decision, instead only listing an undefined "reason code," if any explanation is given at all. Pl. PI Mot. at 9-10. And the notices do not provide adequate information to clearly identify how people losing coverage may request a hearing, such as phone numbers or addresses. *See* Pl. PI Mot.

⁴² MaryBeth Musumeci, et al., *Key State Policy Choices About Medicaid Home and Community-Based Services*, KFF (Feb. 4, 2020).

⁴³ Victoria Peebles & Alex Bohl, *The HCBS Taxonomy: A New Language for Classifying Home and Community-Based Services*, 4 MEDICARE & MEDICAID RSCH. REV. E1 (2014).

at 11-12. This lack of clarity is particularly troubling because Florida Medicaid enrollees typically struggle with health literacy in the first place.

General literacy rates in Florida are below the U.S. average. Nearly one-quarter of Florida adults are at or below literacy Level 1, the lowest of the five levels, compared to 22% nationally.⁴⁴ Below Level 1 literacy tasks include “read[ing] brief texts on familiar topics to locate a single piece of specific information. . . [that] is identical in form to information in the question or directive.”⁴⁵ Below Level 1 literacy requires “[o]nly basic vocabulary knowledge” and does not require the ability to “understand the structure of sentences or paragraphs.”⁴⁶ Even a cursory examination of Florida’s notices underscores their inaccessibility, even to people with advanced literacy skills.

Health literacy is an urgent matter for Medicaid enrollees. Nationally, 70% of adult Medicaid enrollees do not know which government agency to contact for problems with their health insurance.⁴⁷ Less than half (46%) report that understanding their health insurance is somewhat or very difficult.⁴⁸ The difficulties of health system navigation are particularly pronounced for Medicaid enrollees, who on average have a fifth grade reading level.⁴⁹ The problem of health literacy is not confined to Medicaid

⁴⁴ Florida Literacy Coalition. *Survey of Adult Skills*. Accessed 11/16/23, <https://floridaliteracy.org/PIAAC.html>

⁴⁵ *Program for the International Assessment of Adult Competencies. Literacy Proficiency Levels*, NAT’L CTR. FOR EDUC. STATS., <https://nces.ed.gov/surveys/piaac/measure.asp> (last visited Apr. 4, 2024).

⁴⁶ *Id.*

⁴⁷ *Survey of Consumer Experiences with Health Insurance*, KFF (2023), <https://www.kff.org/private-insurance/poll-finding/kff-survey-of-consumer-experiences-with-health-insurance/>

⁴⁸ *Id.*

⁴⁹ Weiss BD, et. al, *Illiteracy among Medicaid recipients and its relationship to health care costs*. J HEALTH CARE POOR UNDERSERVED (1994).

enrollees; 88% of U.S. adults experience problems with health literacy, and the problem is particularly pronounced for Hispanic adults, over 40% of whom lack all but the most basic health literacy.⁵⁰ Having to navigate Florida’s termination notices under these circumstances amounts to a ridiculously impossible task.

Florida Medicaid enrollees are especially susceptible to misunderstanding Florida’s confusing termination notices. What this population needs is clear: direct notices that provide them all the information to which they are constitutionally entitled so that they can make an informed decision on whether to exercise their rights. However, Florida has ignored the “brutal need” its Medicaid enrollees face by drafting incomprehensible termination notices when the needs of Florida’s Medicaid population demand more.

III. Without Medicaid, Floridians Will Suffer Poor Health Outcomes

Health care for low-income people without health insurance is virtually unavailable in Florida. With the loss of Medicaid comes the loss of health plan enrollment, an accessible participating provider network, and protection against all but nominal cost-sharing (and no cost-sharing for children and pregnant people) – essentially, all of health care itself. The state’s skeletal safety net provider system offers no solace; it cannot begin to meet primary, preventive, and acute care needs, much less long-term care needs, for which there simply *is* no safety net.

⁵⁰ U.S. DEP’T OF HHS, AMERICA’S HEALTH LITERACY (2008), <https://www.ahrq.gov/sites/default/files/wysiwyg/health-literacy/dhhs-2008-issue-brief.pdf>.

- A. Florida ranks near the bottom nationally in healthcare access, outcomes, and social determinants of health.

Florida ranks either last or close to last in the nation across multiple health care access measures. Out of 50 states and the District of Columbia, Florida ranks 40th in “prevention and treatment” on the Commonwealth Fund’s 2023 Scorecard on State Health System Performance.⁵¹ This means that Florida has low rates of preventive care (such as recommended vaccines and cancer screenings) and high rates of children and adults who need but are not receiving mental health treatment.⁵²

Healthcare access, utilization, and outcomes in Florida are especially concerning for pregnant people. For example, Florida ranks **last** in the US for providing timely prenatal care in the first trimester.⁵³ In 2022, 28% of pregnant people in Florida did not receive first trimester prenatal care, compared to 22% nationally.^{54,55} Additionally, one in five Floridians is uninsured one month before pregnancy, compared to 14% of all U.S. mothers.⁵⁶ This underscores that, even before coverage loss from Medicaid unwinding began in Florida, people were more likely to be

⁵¹ *2023 Scorecard on State Health System Performance: Florida Ranking Highlights*, COMMONWEALTH FUND (June 22, 2023), <https://interactives.commonwealthfund.org/2023/state-scorecard/Florida.pdf>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *FLHealthCharts: Overview*, FLA. DEP’T OF HEALTH, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=PRAMS.Overview> (last visited Mar. 8, 2024).

⁵⁵ *2023 Scorecard on State Health System Performance: Florida Ranking Highlights*, COMMONWEALTH FUND (June 22, 2023), <https://interactives.commonwealthfund.org/2023/state-scorecard/Florida.pdf>.

⁵⁶ *Prevalence of Selected Maternal and Child Health Indicators for Florida, Pregnancy Risk Assessment Monitoring System (PRAMS), 2016–2020*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/prams/prams-data/mch-indicators/states/pdf/2020/florida-prams-mch-indicators-508.pdf> (last visited Mar. 8, 2024).

uninsured when they became pregnant. And the number of uninsured people in Florida is growing as a result of coverage loss due to Medicaid unwinding. If people lose Medicaid, they will likely revert to being uninsured, which is associated with receiving less prenatal care.

With prenatal care and insurance rates among pregnant people well below the national average, it should be no surprise that pregnant Floridians also have higher maternal mortality rates than the rest of the country. Between 2018 and 2021, Florida's maternal mortality rate per 100,000 live births was 26.3, higher than the 23.5 rate for the U.S. overall.⁵⁷ Further, 10.9% of all live births in Florida in 2021 were preterm (similar to the national average of 10.5%).⁵⁸ The rate of preterm birth in Florida between 2020-2022 is highest for black infants (14.9%), followed by American Indian/Alaska Natives (9.8%), Hispanics (9.5%), Whites (9.5%) and Asian/Pacific Islanders (9.3%).⁵⁹ Yet, multiple studies suggest that access to Medicaid has narrowed disparities for women of color on measures of maternal mortality, infant mortality, low birthweight, and preterm birth.⁶⁰ Further, access to Medicaid has been linked to

⁵⁷ *Maternal deaths and mortality rates per 100,000 live births, 2018-2021*, KFF, <https://www.kff.org/other/state-indicator/maternal-deaths-and-mortality-rates-per-100000-live-births/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Mar. 8, 2024).

⁵⁸ *Percentage of Births Born Preterm by State*, CTR. FOR DISEASE CONTROL (2021), https://www.cdc.gov/nchs/pressroom/sosmap/preterm_births/preterm.htm; *Births in the United States, 2022*, CTR. FOR DISEASE CONTROL (August 2023), <https://www.cdc.gov/nchs/products/databriefs/db477.htm>

⁵⁹ *Preterm Birth: Data for Florida*, MARCH OF DIMES, <https://www.marchofdimes.org/peristats/data?reg=99&top=3&stop=60&lev=1&slev=4&obj=9&sreg=12> (last modified Jan. 2022).

⁶⁰ *E.g.*, Erica L. Eliason, *Adoption of Medicaid Expansion Is Associated with Lower Maternal Mortality*, 30 WOMEN'S HEALTH ISSUES 147 (2020), <https://doi.org/10.1016/j.whi.2020.01.005>;

fewer postpartum hospitalizations.⁶¹

Pregnant people are not the only population that struggles with poor health outcomes in Florida. Those with mental health needs are severely underserved: Florida ranks 50th in the share of children who did not receive needed mental health care (29% in FL vs. 20% in U.S. overall),⁶² and 43rd among adults with any mental illness who did not receive treatment (58% in FL vs. 55% in U.S. overall).⁶³

Floridians who lose Medicaid reside in a state that has some of the worst healthcare affordability and highest uninsured rates in the country. Florida ranks 44th in access and affordability, reflecting high out-of-pocket costs relative to income and high uninsured rates.⁶⁴ Over 11% of Floridians (over 2.4 million people) were uninsured in 2022, compared to 8% of the population nationally.⁶⁵ Only four states had higher uninsured rates than Florida.⁶⁶ Moreover, Florida ranked 43rd in the share

Scott R. Sanders, Michael R. Cope, Paige N. Park, Wesley Jeffery, & Jordan E. Jackson, *Infants without health insurance: Racial/ethnic and rural/urban disparities in infant households' insurance coverage*, 15 PLOS ONE 1 (2020), <https://doi.org/10.1371/journal.pone.0222387>; Chintan B. Bhatt & Consuelo M. Beck-Sagué, *Medicaid Expansion and Infant Mortality in the United States*, 108 AM. J. PUB. HEALTH 565 (2018), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2017.304218>; Clare C. Brown et al., *Association of State Medicaid Expansion Status With Low Birth Weight and Preterm Birth*, 321 JAMA 1598 (2019), <https://doi.org/10.1001/jama.2019.3678>.

⁶¹ Steenland MW, Wherry LR. Medicaid Expansion Led To Reductions In Postpartum Hospitalizations. *Health Aff (Millwood)*. 2023 Jan;42(1):18-25. doi: 10.1377/hlthaff.2022.00819. PMID: 36623214; PMCID: PMC10882633.

⁶² 2023 Scorecard on State Health System Performance: Florida Ranking Highlights, COMMONWEALTH FUND (June 22, 2023), <https://interactives.commonwealthfund.org/2023/state-scorecard/Florida.pdf>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Health Insurance Coverage of the Total Population, 2022*, KFF, <https://www.kff.org/other/state-indicator/total-population/?dataView=1¤tTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Mar. 14, 2024).

⁶⁶ *Id.*

of adults who avoid healthcare due to cost (13.3% in FL vs. 10.1% nationally)⁶⁷ and just under half (45.8%) of Florida adults who report an unmet need for mental health treatment did not receive care due to the cost, compared to 39.7% in the U.S. overall.⁶⁸

Florida also ranks poorly among the states in measures of income disparities and health. Specifically, Florida is 50th in income disparities in health performance.⁶⁹ This indicator “measure[s] the difference between rates for a state’s low-income population ... and higher-income population” and “rank[s] states based] on the magnitude of the resulting disparities in performance.”⁷⁰ This is troubling because it means that the poorest individuals are experiencing worse health outcomes. This problem will only be exacerbated by thousands of individuals *losing* their only means of health insurance without being given a meaningful opportunity to contest the loss of those benefits.

Unsurprisingly, Floridians’s struggles with healthcare unaffordability contributes to the state having the most medically disenfranchised residents in the

⁶⁷ *America’s Health Rankings 2023 Annual Report*, UNITED HEALTH FOUND., <https://www.americashealthrankings.org/explore/measures/costburden/FL> (last visited Mar. 14, 2024).

⁶⁸ *Adults Reporting Unmet Need for Mental Health Treatment in the Past Year Because of Cost, 2018-2019*, KFF, <https://www.kff.org/other/state-indicator/adults-reporting-unmet-need-for-mental-health-treatment-in-the-past-year-because-of-cost/?currentTimeframe=0&selectedDistributions=share-of-adults-reporting-unmet-need-for-mental-health-treatment-who-did-not-recei> (last visited Mar. 14, 2024).

⁶⁹ *Id.*; see also *2023 Scorecard on State Health System Performance: Florida Ranking Highlights*, COMMONWEALTH FUND (June 22, 2023), <https://interactives.commonwealthfund.org/2023/state-scorecard/Florida.pdf>.

⁷⁰ see also *2023 Scorecard on State Health System Performance: Florida Ranking Highlights*, COMMONWEALTH FUND (June 22, 2023), <https://www.commonwealthfund.org/publications/scorecard/2023/jun/2023-scorecard-state-health-system-performance>

entire country.⁷¹ Nearly 10.5 million people are medically disenfranchised in Florida, meaning that they “may not have access to a usual source of primary care due to a shortage of providers in their community.”⁷²

Florida’s Medicaid enrollees are disproportionately people of color, a population that already experiences health disparities. Black and Hispanic people account for 23.6% and 35.3% of Florida Medicaid enrollees, compared to 18.7% and 28.2% of the general population.⁷³ Black and Hispanic people “fared worse compared to White people across most examined measures of health coverage and access to and use of care,” according to the Kaiser Family Foundation.⁷⁴ These disparities are only likely to worsen in Florida as more people lose Medicaid, become uninsured, and therefore are unable to receive needed healthcare.

- B. Existing safety net providers cannot meet the current demand for affordable healthcare for uninsured Floridians, and this problem will grow due to Medicaid coverage loss.

The two major types of safety net providers for individuals who cannot afford health care—community health centers and free clinics—cannot meet the current demand for their services in Florida, let alone the increased demand due to Medicaid

⁷¹ NAT’L ASS’N OF CMTY HEALTH CTRS., CLOSING THE PRIMARY CARE GAP: HOW COMMUNITY HEALTH CENTERS CAN ADDRESS THE NATION’S PRIMARY CARE CRISIS 9 (2023), https://www.nachc.org/wp-content/uploads/2023/06/Closing-the-Primary-Care-Gap_Full-Report_2023_digital-final.pdf

⁷² *Id.* at 8 app. B.

⁷³ *Distribution of the Medicaid Population by Race/Ethnicity*, KAISER FAM. FOUND., <https://www.kff.org/other/state-indicator/distribution-of-the-medicaid-population-by-race-ethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Mar. 8, 2024).

⁷⁴ *Key Data on Health and Health Care by Race and Ethnicity*, KFF (March 2023), <https://www.kff.org/racial-equity-and-health-policy/report/key-data-on-health-and-health-care-by-race-and-ethnicity/>

unwinding.

Florida community health centers served 30.5 million patients in 2022.⁷⁵ These patients include agricultural workers, homeless people, children, veterans, public housing residents, older adults, and people of color.⁷⁶ Unsurprisingly, these populations are among the poorest in the state. Eighty percent of Florida community health center patients have income below the federal poverty level (FPL), and 88.7% have income below 200% FPL (\$27,180/year).⁷⁷ As of 2022, 27.8% of Florida community health center patients were uninsured,⁷⁸ and this number is expected to grow as a result of Medicaid coverage terminations.

Consequently, Florida community health centers are expected to serve about 85,000 to 129,000 fewer patients over the 14 month Medicaid unwinding period because of reduced revenue from patients losing Medicaid.⁷⁹ And, although the number of uninsured individuals in Florida is expected to increase due to Medicaid

⁷⁵ HRSA, *2022 Uniform Data System Trends* (Sept. 2023), <https://bphc.hrsa.gov/sites/default/files/bphc/data-reporting/2022-uds-trends-data-brief.pdf>; Sara Rosenbaum, et al., *With Over a Half-Million Pregnant Patients Served Annually, Community Health Centers Play a Crucial Role in Protecting Coverage During Medicaid Wind-Down*, GEIGER GIBSON PROGRAM IN CMTY. HEALTH DATA (June 6, 2023).

⁷⁶ *2022 Annual Report*, FLA. ASS'N OF CMTY. HEALTH CTRS., <https://fachc.org/3d-flip-book/2022-annual-report/> (last visited Mar. 8, 2024); *Florida Health Center Fact Sheet*, NAT'L ASS'N OF CMTY. HEALTH CTRS., 6 <https://www.nachc.org/community-health-centers/state-level-health-center-data-maps/> (last visited Mar. 8, 2024).

⁷⁷ *2022 Annual Report*, FLA. ASS'N OF CMTY. HEALTH CTRS. 6 <https://fachc.org/3d-flip-book/2022-annual-report/> (last visited Mar. 8, 2024).

⁷⁸ *Florida Health Center Fact Sheet*, NAT'L ASS'N OF CMTY. HEALTH CTRS., <https://www.nachc.org/community-health-centers/state-level-health-center-data-maps/> (last visited Mar. 8, 2024).

⁷⁹ Peter Shin, et al., *Updated Estimates Show That Medicaid Unwinding Threatens Health Center Capacity to Serve Vulnerable Patients*, GEIGER GIBSON PROGRAM IN CMTY. HEALTH (Nov. 9, 2023), <https://geigergibson.publichealth.gwu.edu/updated-estimates-show-medicaid-unwinding-threatens-health-center-capacity-serve-vulnerable>.

coverage loss, federal funding for community health centers has remained flat for the last three years.⁸⁰ These inequities are unsustainable for community health centers, which already operate on razor thin margins. Indeed, 57% of community health centers in Florida have margins of less than 5% as of 2022.⁸¹ Of the 47 community health centers in Florida, 18 have a negative margin, and nine have a margin between 0-5%.⁸² These low-margin community health centers serve 884,621 patients in Florida.⁸³ Without an increase in funding—which does not appear to be on the horizon—these centers will be unable to meet the increased demand they are likely to see from individuals losing Medicaid, leaving those people without healthcare access.

The same is true for free clinics. Florida’s free clinics anticipate a “significant increase in demand” from the over one million people who lost Medicaid and became uninsured during the Medicaid unwinding period in 2023.⁸⁴ This is in addition to 211,599 low-income uninsured patients with over 544,594 medical, dental, vision, specialty care, behavioral health, and pharmacy visits that free clinics saw in 2022.⁸⁵

⁸⁰ Peter Shin, et al., *Community Health Center Funding Needed to Preserve and Sustain Critical Access to Nearly 31 Million Patients*, GEIGER GIBSON PROGRAM IN CMTY. HEALTH (Nov. 9, 2023), <https://geigergibson.publichealth.gwu.edu/community-health-center-funding-needed-preserve-and-sustain-critical-access-nearly-31-million>.

⁸¹ Peter Shin, et. al., *Community Health Centers in Financial Jeopardy Without Sufficient Federal Funding*, GEIGER GIBSON PROGRAM IN CMTY. HEALTH (Jan. 17, 2024), <https://geigergibson.publichealth.gwu.edu/community-health-centers-financial-jeopardy-without-sufficient-federal-funding>.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ FLA. ASS’N OF FREE & CHARITABLE CLINICS, A LIFE-SAVING INVESTMENT IN FLORIDA’S HEALTH: 2023 STATE FUNDS GRANT IMPACT REPORT 2 (2023), https://assets-002.noviams.com/novi-file-uploads/fafcc/2023_Impact_Report.pdf.

⁸⁵ *Id.*

Finally, the healthcare needs of the increased number of uninsured Floridians who lost Medicaid cannot be met by non-profit hospitals, which already are not providing adequate charitable care. Fifty nonprofit Florida hospitals are considered to have a “fair share” deficit totaling \$412 million because their charity care spending is less than the estimated value of their tax exemption (5.9% of overall expenditures).⁸⁶

The data show that Florida’s safety net system is already over-taxed, and affordable healthcare access is only going to worsen as demand increases. Therefore, Medicaid enrollees whose benefits are being terminated during Medicaid unwinding are likely to lose all access to healthcare.

CONCLUSION

Florida Medicaid serves those in “brutal need” of essential healthcare. Enrollees in Florida Medicaid are very low-income individuals who are among the most vulnerable populations, without a viable alternative for healthcare access and likely to experience adverse health outcomes if they lose coverage. With essential medical care at stake, Florida’s termination notices must comply with the heightened due process standards described in *Goldberg* and required by federal law. Yet, the current notices as displayed in plaintiffs’ complaint fail to meet this standard. These incomprehensible notices are endangering people who, without access to Florida Medicaid coverage, will lose “the very means by which to live.” *Goldberg*, 397 U.S. at 264. For those reasons, the Court should find that Florida’s notices violate the due process clause.

⁸⁶*Fair Share Spending 2023 Results*, LOWN INST., <https://lownhospitalsindex.org/2023-fair-share-spending/> (last visited Mar. 8, 2024).

Respectfully submitted,

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APPENDIX

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5. Fried, Linda P., MD, MPH, Dean and DeLamar Professor of Public Health, Mailman School of Public Health, Professor of Epidemiology and Medicine, Columbia University
6. Galea, Sandro, MD, DrPH, Dean, Robert A. Knox Professor, Boston University
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10. Gusmano, Michael K., PhD, Professor and Associate Dean of Academic Programs, College of Health, Director, Center for Ethics, Lehigh University
11. Hoffman, Allison K., JD, Deputy Dean and Professor of Law, University of Pennsylvania Carey Law School
12. Jeffries, Pamela R., PhD, RN, FAAN, ANEF, FSSH, Dean, Vanderbilt School of Nursing, Valere Potter Distinguished Professor of Nursing, RWJF Nurse Executive Fellow Alumna, Vanderbilt School of Nursing
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102. Westmoreland, Timothy M., JD, Professor from Practice, Emeritus, Georgetown University School of Law

CERTIFICATE OF SERVICE

I, Madeleine K. Rodriguez, hereby certify that on April 5, 2024, I caused the foregoing to be filed with the Clerk of Court for the United States District Court for the Northern District of Florida by using the CM/ECF system (NextGen). I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 5, 2024

/s/ Madeline K. Rodriguez

Madeleine K. Rodriguez