



July 9, 2021

Aaron Butler
 Director of Policy
 Division of TennCare
 310 Great Circle Road
 Nashville, Tennessee 37243

Dear Mr. Butler:

Re: Public Forum on Progress of the TennCare Demonstration

Thank you for the opportunity to provide feedback on Tennessee’s TennCare program.

The undersigned organizations represent millions of individuals facing serious, acute and chronic health conditions in Tennessee. Our organizations have a unique perspective on what individuals need to prevent disease, cure illness and manage chronic health conditions. The diversity of our groups and the patients and consumers we represent enables us to draw upon a wealth of knowledge and expertise and serve as an invaluable resource regarding any decisions affecting the Medicaid program and the people that it serves. We urge TennCare to make the best use of the recommendations, knowledge and experience our organizations offer here.

The purpose of the Medicaid program is to provide healthcare coverage for low-income individuals and families, and our organizations are committed to ensuring that TennCare provides quality and affordable healthcare coverage. Our organizations remain extremely concerned with several components of the most recent TennCare III Section 1115 waiver approval and offer the following comments on the program.

Savings Come at the Expense of Patients' Access to Care

Our organizations have repeatedly voiced our deep concerns with changes to TennCare's financing structure, and many of our organizations filed comments during the comment periods on the TennCare II amendment submitted in November 2019 that we encourage you to review.^{1,2} Block grants are designed to cap or limit the amount of federal funding provided to states, forcing them to either make up the difference with their own funds or make cuts to their programs reducing access to care for the patients we represent. Program cuts will likely result in enrollment limits, benefit reductions, reductions in provider payments or increased out-of-pocket cost-sharing for Medicaid enrollees.

For example, our organizations have serious concerns with the new TennCare policy to implement a closed formulary including as few as one drug per class. Diseases present differently in different patients. Prescription drugs have different indications, different mechanisms of action and different side effects, depending on the person's diagnosis and comorbidities. A closed formulary limits the ability of providers to make the best medical decisions for the care of their patients, effectively taking the clinical care decisions away from the doctor and patient and giving them to the state. A robust, open formulary needs to be part of TennCare so that patients can fully benefit from advancements in treatments and access the medications their doctor believes are best for them.

An appeals process is not sufficient to protect patients' access to care. Research shows that administrative hurdles such as prior authorization for drugs can lead patients to delay or abandon treatment altogether.³ For a patient with a chronic health condition, a pause or delay in treatment could result in their disease worsening irreversibly. Our organizations encourage Tennessee to maintain its open formulary as part of TennCare.

10-Year Approval Jeopardizes Care for Vulnerable Populations

TennCare III was approved for 10 years. Federal statute limits Section 1115 demonstration extensions to three or five years, depending on the populations covered under the demonstration. Our organizations believe it is important to evaluate the evidence of a waiver's impact on the patients we represent and whether policies should be continued at least that often and value the opportunity to regularly comment on the waiver proposals during the extension process. Additionally, the final TennCare III approval includes a number of vulnerable populations including children with special healthcare needs and people with disabilities. Approving a waiver for ten years is particularly inappropriate without additional protections for vulnerable populations.

A ten-year approval is also concerning given Tennessee's history with coverage losses. In 2005, Tennessee changed its eligibility rules to disenroll 170,000 individuals from its Medicaid program due to budgetary pressures, one of only two states to ever go through a large-scale disenrollment of this nature.⁴ Subsequent research found that after this loss of coverage, individuals' self-reported health and access to care declined, visits to doctors and dentists decreased and the use of public and free clinics increased.⁵ Additionally, Tennessee is among the states with the largest increases in uninsured children between 2016 and 2019, with many children losing coverage without a finding that they were ineligible.⁶ Our organizations continue to urge the federal government to rescind this 10-year approval and urge Tennessee to limit any future waiver applications to the three or five year time frame delineated in federal statute.

Removal of Retroactive Eligibility Threatens Patients' Health and Financial Wellbeing

Our organizations oppose Tennessee's decision to continue to waive retroactive coverage in TennCare. Retroactive eligibility in Medicaid prevents gaps in coverage by covering individuals for up to 90 days

prior to the month of application, assuming the individual is eligible for Medicaid coverage during that time frame. It is common that individuals are unaware they are eligible for Medicaid until a medical event or diagnosis occurs. Retroactive eligibility allows patients who have been diagnosed with a serious illness to begin treatment without being burdened by medical debt incurred prior to their official eligibility determination.

Medicaid paperwork can be burdensome and often confusing. A Medicaid enrollee may not have understood or received a notice of Medicaid renewal and only discovered the coverage lapse when picking up a prescription or going to see their doctor. Without retroactive eligibility, Medicaid enrollees could then face substantial costs at their doctor's office or pharmacy. Health systems could also end up providing more uncompensated care. For example, when Ohio was considering a similar provision in 2016, a consulting firm advised the state that hospitals could accrue as much as \$2.5 billion more in uncompensated care as a result of the waiver.⁷ Increased uncompensated care costs are especially concerning as safety net hospitals and other providers continue to deal with the COVID-19 pandemic. Our organizations urge Tennessee not to waive retroactive eligibility for the Medicaid population.

Problems with Previous Public Comment Periods on TennCare Proposals Did Not Give Patients Adequate Opportunities to Share Concerns

As many of our organization shared with the federal government earlier this year, we have significant concerns with the public comment opportunities related the TennCare III approval.⁸ The TennCare III waiver includes numerous components – a funding cap, closed formulary, the continuation of Tennessee's Medicaid Managed Care program and waiving of retroactive coverage - that did not go through the required public comment period. The TennCare II Amendment 42 application was posted on the appropriate Centers for Medicare and Medicaid Services (CMS) website for a public comment period, but the comment portal was down for approximately two days which likely limited the number of comments that could be received from the patient and stakeholder community.

Additionally, CMS did not provide *any* opportunity for public comment on the extension of the existing features of TennCare II. If CMS had accepted public comment on the extension of the existing features of TennCare II as it should have in 2020, patients and patient advocacy organizations would have made extensive comments. The public comment period allows stakeholders to have a voice in the regulatory process, including patients who get their medical care from the Tennessee Medicaid program. We do not believe that the TennCare II Amendment 42 provisions should be implemented under any circumstances, but at a minimum *all* of the provisions should be subject to a new and proper comment period before being submitted to CMS for approval.

Conclusion

Our organizations are committed to working with you to expand affordable, accessible, and adequate healthcare coverage in TennCare. Thank you for the opportunity to provide these comments.

Sincerely,

American Cancer Society Cancer Action Network
American Diabetes Association
American Heart Association
American Liver Foundation
American Lung Association

Arthritis Foundation
Cancer Support Community
CancerCare
Cystic Fibrosis Foundation
Epilepsy Foundation of East Tennessee
Hemophilia Federation of America
The Leukemia and Lymphoma Society
National Hemophilia Foundation
National MS Society
National Organization for Rare Disorders
National Patient Advocate Foundation
Pulmonary Hypertension Association
Susan G. Komen
The AIDS Institute
United Way Worldwide

¹ Patient Groups Oppose Tennessee Medicaid Block Grant Proposal. December 18, 2019.

<https://www.lung.org/media/press-releases/patient-groups-oppose-medicaid-block-grant>

² Patient Groups Comments to HHS re TennCare II Demonstration Amendment 42. December 18, 2019.

<https://www.lung.org/getmedia/4b0b487a-8a65-4461-acc9-8e7a739e7d16/health-partner-comments-to-12.pdf>

³ American Medical Association, 2017 AMA Prior Authorization Physician Survey. <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/arc/prior-auth-2017.pdf>

⁴ Melinda B. Buntin, Ph.D. "Tennessee's Opening Bid for a Medicaid Block Grant." (October 31, 2019) New England Journal of Medicine. Accessed at: <https://www.nejm.org/doi/full/10.1056/NEJMp1913356?query=TOC>

⁵ Thomas DeLeire, "The Effect of Disenrollment from Medicaid on Employment, Insurance Coverage, Health and health Care Utilization," (August 2018). NBER Working Paper No. 24899. Accessed at:

<https://www.nber.org/papers/w24899>

⁶ Joan Alker and Alexandra Corcoran, "Children's Uninsured Rate Rises by Largest Annual Jump in More Than a Decade," Georgetown University Health Policy Institute, Center for Children and Families. October 2020.

https://ccf.georgetown.edu/wp-content/uploads/2020/10/ACS-Uninsured-Kids-2020_10-06-edit-3.pdf

⁷ Virgil Dickson, "Ohio Medicaid waiver could cost hospitals \$2.5 billion", Modern Healthcare, April 22, 2016. (<http://www.modernhealthcare.com/article/20160422/NEWS/160429965>)

⁸ Patient Groups Letter to CMS Administrator Brooks-LaSure re TennCare III 1115 Waiver. May 25, 2021.

https://www.lung.org/getmedia/2dfd2bd6-bc69-4940-84a1-1d1da0e8d1d1/patient-letter-to-cms-re-tenncare-iii-approval_final.pdf