

December 20, 2019

Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W., Room 445-G  
Washington, D.C. 20201

**Re: TennCare II - Amendment 42: Block Grant**

Dear Administrator Verma:

We appreciate the opportunity to submit comments on the TennCare II Demonstration Amendment 42: Block Grant.

The purpose of the Medicaid program is to provide health care coverage for low-income individuals and families. As health care advocates and consumer organizations, we work to ensure that consumers are at the front and center of the health care debate, and we are committed to ensuring that TennCare provides quality and affordable health care coverage. Unfortunately, this waiver proposal to convert the funding structure of the TennCare program to a block grant will jeopardize beneficiaries' access to care.

We oppose Tennessee's proposal and offer the following comments.

*Block Grant Structure*

We oppose Tennessee's proposal to change the financing structure for its Medicaid program to a block grant. We fear that the state will cut coverage for certain treatments completely or impose additional barriers to important services, making it more difficult for patients to access the care that they need.

Additionally, Tennessee may choose to cut payments to providers to help keep spending under the new block grant. As the gap between the block grant and actual costs of care increases over time, the pressure on Tennessee to limit enrollment, reduce benefits or increase cost-sharing for patients will only increase. These cuts are unacceptable.

Tennessee's proposal would include vulnerable eligibility groups such as children and people with disabilities in the block grant. We have serious concerns about how this will impact their care.

Additionally, under this proposal, current and future administrations would not need to get approval to make changes to benefits and services, putting these patients' care at grave risk.

Changing TennCare to a block grant through the 1115 waiver process is illegal. The Secretary of Health and Human Services is not permitted to waive Sections 1903 and 1905, where the financing structure of the Medicaid program is located, through these types of waivers, as multiple experts have noted.<sup>1,2</sup> Such a change would require congressional authority, yet Congress has repeatedly declined to pass legislation on this issue, most recently during the debate over repealing and replacing the Affordable Care Act in 2017.

### *Prescription Drug Access*

We oppose the proposal to create a closed formulary with as few as one drug per class and exclude prescription drugs approved through the Food and Drug Administration's (FDA) accelerated approval process. Limiting access to medications will be detrimental to Americans.

Prescription drugs have different indications, different mechanisms of action, and different side effects, depending on the person's diagnosis and comorbidities. Restricting TennCare's drug benefits to a closed formulary would limit 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.

The waiver proposal does not include an appeals process for patients to access prescription drugs that are no longer covered. TennCare patients include very low-income pregnant women, the elderly, children and the blind and disabled. These individuals rely on Medicaid to provide treatment and may need access to a medication no longer covered under the new restrictions. Without an appeals process to access denied medications, these patients could experience worse health outcomes and even death.

### *State Flexibilities*

We oppose a number of proposals in the waiver application considered under the broad moniker of "state flexibilities."

Tennessee is asking to be exempt from federal standards and requirements for its managed care program, including the Managed Care Rule. This important safeguard ensures Medicaid Managed Care Organizations (MCOs) have to meet certain requirements related to patient care. For example, the managed care rule sets standards related to adequate networks, so patients can actually see the appropriate providers and receive the care they need. The managed care rule requires MCOs to comply with standards of time and distance to measure this network adequacy, helping patients access both primary care providers and specialists they need.

Tennessee is asking to change the "amount, duration, and scope" of benefits, which could allow the state to put caps on services or only cover critical services for certain individuals. The Medicaid population, by definition is a vulnerable population, allowing Tennessee to change the "amount, duration, and scope" of benefits could negatively impact patient care and outcomes. One example might be limiting the number of days a patient could stay in the hospital.

Finally, the state would no longer need to get approval to make changes to benefits and services in the future and would like to make this demonstration permanent, removing important opportunities for the public to provide feedback on the how the program is working for key stakeholders before any policies are implemented or continued. It is especially important that beneficiaries impacted by the demonstration waiver have the ability to provide feedback to the state and CMS. TennCare is a joint venture between Tennessee and CMS. Both entities, as well as the people it serves, should have a voice in how the program is administered.

The core objective of the Medicaid program is to furnish health care to low-income and needy populations. This waiver does not further that goal and we oppose the proposal. Thank you for the opportunity to submit comments.

Sincerely,

Consumers for Quality Care

National Health IT Collaborative for the Underserved

MANA, A National Latina Organization

Consumer Action

Asthma and Allergy Foundation of America

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<sup>1</sup> Joan Alker. Pending CMS Guidance on Medicaid Block Grants: Executive Overreach Strikes Again. Georgetown University Center for Children and Families. June 27, 2019. Available at: <https://ccf.georgetown.edu/2019/06/27/pending-cms-guidance-on-medicaid-block-grants-executive-overreach-strikes-again/>.

<sup>2</sup> <https://theincidentaleconomist.com/wordpress/tennessee-wants-to-block-grant-medicaid-is-that-legal/>