

November 26, 2019

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

Sent via email

Re: TennCare II Demonstration, Amendment 42

Dear Administrator Verma:

We have reviewed Tennessee's proposal dated November 20, 2019, which is now pending review at the Centers for Medicare and Medicaid Services (CMS). The proposal purports to amend Tennessee's longstanding TennCare II Medicaid demonstration project, but it would fundamentally transform Tennessee's Medicaid program by changing the relationship between the state and the federal government. As such, it should be treated as a new demonstration request, not an amendment.

Tennessee seeks a block grant of federal funds and new authority to bypass federal beneficiary protections on how managed care organizations operate, how benefits including prescription drugs are provided, and how beneficiaries enroll. Yet the proposal fails to fully explain how Tennessee plans to use this new authority, making it impossible for stakeholders to determine the potential impact and effectively comment.

For example, the proposal does not explain why Tennessee needs to waive managed care regulations other than saying the rules are unnecessary and the state needs the "flexibility" to operate within a capped financing structure. Since virtually all of Tennessee's Medicaid beneficiaries are provided care through a managed care plan, this is an issue of critical importance.

The state fails to explain how any changes in federal oversight and state accountability for Medicaid funds would affect beneficiaries, which is especially concerning given the statement that limiting federal oversight is necessary to allow the state to stay within a capped funding amount.

Even if CMS takes the proposal at face value and deems it an amendment, the Special Terms and Conditions of Tennessee's current waiver require that the amendment include, among other things, "a detailed description of the amendment, including proposed waiver and expenditure authorities

and impact on beneficiaries with sufficient supporting documentation."¹ The state's submission does not meet this test. We note that the Government Accountability Office (GAO) recently confirmed the importance of full transparency and public input on significant amendments and raised concerns that such amendments are being approved without a full understanding of their impact.²

We believe that the application should not be certified as complete and should instead be returned to the state so that it may provide more information for the public to comment on in a meaningful way. Furthermore, the state should submit the proposal as a new demonstration request and not an amendment.

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¹ See Special Terms and Conditions, Section III.7 at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/tn-tennare-il-ca.pdf>.

² "Medicaid Demonstrations: Approvals of Major Changes Need Increased Transparency, GAO 19-315, April 2019, <https://www.gao.gov/assets/700/698608.pdf>.