



September 9, 2021

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 2021

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Attention: CMS-9914-P
P.O. Box 8013
Baltimore, MD 21244-8013

Re: TennCare III - Approval Special Terms and Conditions Demonstration

Dear Secretary Becerra and Administrator Brooks-LaSure,

The Cancer Support Community (CSC), an international nonprofit organization that provides support, education, and hope to cancer patients, survivors, and their loved ones, welcomes the opportunity to comment on the approved Special Terms and Conditions (STCs) of the TennCare III demonstration waiver. As the largest provider of social and emotional support services for people impacted by cancer, CSC has a unique understanding of the cancer patient experience. In addition to our direct services, our Research and Training Institute and Cancer Policy Institute are industry leaders in advancing the evidence base and promoting patient-centered public policies.

We were disappointed that the TennCare III demonstration waiver approved by the previous Administration on January 8, 2021 did not go through a proper and required public comment period, which is a critical component of any section Medicaid demonstration waiver. We appreciate that the current Administration opened a federal comment period for local and national stakeholders to provide input on the TennCare III demonstration waiver. A robust public comment period allows patients and advocacy organizations to have a voice in the regulatory process. As such, we were pleased to see that the Administration is reconsidering the TennCare III demonstration approval.

For the reasons outlined below, CSC has serious concerns with the TennCare III demonstration waiver and urge the Centers for Medicare and Medicaid Services (CMS) to rescind its approval.

Aggregate Cap Financing Approach

The TennCare III demonstration approval imposes an “aggregate cap” on federal Medicaid matching payments to Tennessee. In CSC’s December 2019 [comments regarding the TennCare II demonstration waiver](#), we opposed the state’s proposal to change the financing structure for its Medicaid program to a block grant because of concerns that the state will cut coverage for certain treatments completely or impose additional barriers to important services. Similarly, we are concerned that the aggregate cap and shared savings financing will make it more difficult for cancer patients in Tennessee to access the care that they need. Nearly 42,000 in Tennessee will be diagnosed with cancer in 2021 (ACS, 2021), and access to quality, timely, comprehensive, and affordable health care is crucial to their health outcomes.

The TennCare III demonstration approval incentivizes the state to reduce its Medicaid spending on covered services. As the gap between the cap and actual costs of care increases over time, the pressure on Tennessee to cut their costs will only increase. This will leave the state with the choice to cut payments to

providers for covered services or restrict access to care for patients, with either avenue harming beneficiaries.

We urge CMS to rescind its approval of the aggregate cap and shared savings financing structure because it jeopardizes access to care for patients, which does not promote the objectives of Medicaid.

Closed Prescription Drug Formulary

We strongly oppose the approved STCs that allow Tennessee to implement a commercial style closed prescription drug formulary for adult beneficiaries. As CSC emphasized in our TennCare II demonstration waiver comments, we are concerned that a closed formulary will severely limit the ability of providers to make the best medical decisions for their patients, based on the patient's individual needs. A formulary that may only cover one or two drugs in a class could harm patients and potentially raise medical costs as patients do not react, or react poorly, to the limited medications that can be prescribed to them. This is particularly true for cancer patients who often receive personalized or combination therapy. Rather, providers should be prescribing based on clinical guidelines and a shared decision-making process with the patient.

The closed formulary has the potential to create delays in appropriate care, cause patients to forgo care completely, increase patient distress, and ultimately even contribute to higher health care costs. In CSC's *Access to Care in Cancer 2016* study, we found that 25% of patients experience delays in accessing needed care (due to policy barriers such as prior authorization or step therapy), with Medicaid patients experiencing the greatest care delivery delays.

The approved exceptions process outlined in the TennCare III demonstration waiver simply cannot ensure uninterrupted access to needed drugs, particularly for patients living with cancer or other life-threatening diseases. We urge CMS to withdraw its approval of the closed prescription drug formulary.

Waiving Retroactive Coverage

The TennCare III demonstration approval also continues the waiver of retroactive eligibility, which has been in place since 1994 and therefore no longer qualifies as an experimental program. We urge CMS to withdraw the TennCare III demonstration waiver permitting Tennessee to eliminate retroactive coverage.

Medicaid's retroactive eligibility prevents gaps in health care coverage by covering individuals for up to 3 months prior to a beneficiary's application date, provided that the individual would have been eligible for Medicaid coverage during that period. Many people only become aware that they are eligible for Medicaid when they get diagnosed with a serious illness or have a major health emergency and cannot complete the application process while undergoing treatment. Retroactive eligibility allows patients in these situations to begin treatment without being financially burdened prior to their official eligibility determination. Retroactive coverage is especially important during the COVID-19 pandemic, protecting patients and providers by ensuring that medical bills are paid even if a Medicaid application is not filed until the calendar month following a health crisis.

Evidence has shown that waiving retroactive coverage also raises uncompensated care costs for hospitals and other safety-net health care providers. Indiana, for example, was required to continue to provide some retroactive coverage for medical costs incurred by parents and caretaker relatives with low incomes, with the amount paid averaging \$1,561 (Wachino, 2016). Individuals and families with low incomes cannot afford \$1,500 in unexpected medical expenses and the COVID-19 pandemic has significantly increased financial hardship among people many people. Even prior to the pandemic, 46% of adults report not having cash to cover a \$400 emergency expense (Larrimore et al., 2016).

10-Year Waiver Approval

CMS approved the TennCare III demonstration waiver for 10 years to allow the state to test its demonstration. Section 1115 of the Social Security Act gives the Secretary of Health and Human Services (HHS) authority to waive Medicaid requirements only “to the extent and for the period necessary” to enable the state to carry out its demonstration. Historically, the TennCare demonstration waiver had been approved for periods of 3 to 5 years and prior to the TennCare III demonstration approval, no new state demonstrations had been approved for a 10-year period. It is important to evaluate the evidence of a demonstration waiver’s impact on Medicaid beneficiaries, especially for those impacted by cancer, and whether provisions should be continued.

Given the unprecedented duration of an approval, should CMS allow TennCare III to move forward, we urge you to not permit the demonstration to last for 10 years.

Medicaid Expansion

Medicaid provides critically important health coverage and access to care for cancer patients and survivors. The COVID-19 pandemic has significantly strained our nation’s health care system and continues to have an enormous impact on the continuity of care for people impacted by cancer. In March 2021 over 1.4 million Tennesseans were enrolled in Medicaid (Medicaid.gov, 2021), a nearly 10% increase compared to March 2020 due to the pandemic and subsequent economic downturn (Stolyar et al., 2021).

While the Affordable Care Act (ACA) expanded Medicaid coverage to adults with incomes up to 138% of the Federal Poverty Level, providing health coverage to millions more adults nationally, Tennessee is one of 12 states that still hasn’t expanded access to Medicaid to allow more adults to be eligible for this lifesaving program. This leaves nearly 120,000 Tennesseans in a “coverage gap” (CBPP, 2021) without access to affordable health insurance coverage options. Expanding Medicaid could extend coverage to these uninsured adults as well as bring in, through the American Rescue Plan, an additional \$1.4 billion in federal funds to Tennessee, enough to fully cover the cost of the program for over 6 years (CBPP, 2021).

Evidence has shown that Medicaid expansion is linked to increased access and utilization to health care services, improved the affordability of care, and reduced uncompensated care (Guth et al., 2020). There is also data that points toward a trend in increased early-stage diagnoses for colorectal, lung, breast, and pancreatic cancer in states that increased access to health care through Medicaid expansion (Jemal et al., 2017). Medicaid expansion also plays a critical role in reducing racial and ethnic health disparities, with one recent study finding that racial disparities in timely treatment for cancer patients were reduced in states that expanded Medicaid (Adamson et al., 2019).

Rather than approving a demonstration waiver that both jeopardizes Tennesseans’ access to Medicaid health coverage and services and promotes health inequity, CMS should encourage Tennessee to expand Medicaid. This would both benefit the state financially and extend access to care to more adults with low-income in need of coverage, a core objective of the Medicaid program.

Conclusion

The core objective of the Medicaid program is to furnish health care to people living with limited incomes. The TennCare III demonstration waiver does not further this core objective. Access to quality, comprehensive, and affordable health care is critically important for Tennesseans living with cancer, and this demonstration waiver will jeopardize beneficiaries’ access to care.

Thank you again for the opportunity to provide comments on the TennCare III demonstration waiver. Should you have any questions, please contact Phylicia L. Woods, Executive Director of the Cancer Policy Institute at the Cancer Support Community at pwoods@cancersupportcommunity.org.

Sincerely,

Phylicia L. Woods, JD, MSW
Executive Director – Cancer Policy Institute
Cancer Support Community Headquarters

Larry Tolbert, MBA
Board Chair
Gilda's Club Memphis

References

- Adamson, B.J.S., Cohen, A.B., Estevez, M., Magee, K., Williams, E., Gross, C.P., Meropol, N.J., & Davidoff, A.J. (2019). Affordable Care Act (ACA) Medicaid expansion impact on racial disparities in time to cancer treatment. *Journal of Clinical Oncology*. Retrieved from https://ascopubs.org/doi/10.1200/JCO.2019.37.18_suppl.LBA1.
- American Cancer Society. (2021). Tennessee. *Cancer Statistics Center*. Retrieved from <https://cancerstatisticscenter.cancer.org/#!/state/Tennessee>.
- Cancer Support Community. (2016). *Access to Care in Cancer 2016: Barriers and Challenges*. Retrieved from <https://www.cancersupportcommunity.org/sites/default/files/migrated/pdf/csc-access-to-care-barriers-challenges.pdf>.
- Center on Budget and Policy Priorities. The Medicaid Coverage Gap in Tennessee. Retrieved from <https://www.cbpp.org/sites/default/files/7-8-21tax-factsheets-tn.pdf>.
- Guth, M., Garfield, R., & Rudowitz, R. (2020). The Effects of Medicaid Expansion under the ACA: Studies from January 2014 to January 2020. *Kaiser Family Foundation*. Retrieved from <https://www.kff.org/medicaid/report/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review/>.
- Jemal, A., Lin, C.C., Davidoff, A.J., Han, X. (2017). Changes in Insurance Coverage and Stage at Diagnosis Among Nonelderly Patients With Cancer After the Affordable Care Act. *Journal of Clinical Oncology*. <https://ascopubs.org/doi/full/10.1200/JCO.2017.73.7817>.
- Larrimore, J., Dodini, S., and Thomas, L. (2016). Report on the economic well-being of U.S. Households in 2015. *Board of Governors of the Federal Reserve System Report*. Retrieved from <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>.
- Medicaid.gov. (2021). *March 2021 Medicaid & CHIP Enrollment Data Highlights*. Retrieved from <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html>.
- Stolyar, L., Hinton, E., Singer, N., & Rudowitz, R. (2021). Growth in Medicaid MCO Enrollment during the COVID-19 Pandemic. *Kaiser Family Foundation*. Retrieved from <https://www.kff.org/coronavirus-covid-19/issue-brief/growth-in-medicaid-mco-enrollment-during-the-covid-19-pandemic/>.

Wachino, V. (2016). *Letter to Tyler Ann McGuffee*. Retrieved from <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/Healthy-Indiana-Plan-2/in-healthy-indiana-plan-support-20-lockouts-redetermination-07292016.pdf/>.