



National
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September 9, 2021

The Honorable Xavier Becerra, Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Ave., S.W.
Washington, D.C. 20201

Re: Comments on TennCare III Project Approved Special Terms and Conditions

Dear Secretary Becerra:

Thank you for the opportunity to comment on the approved special terms and conditions (STCs) of Tennessee's TennCare III project. The National Consumer Law Center (NCLC) is a nonprofit organization that has used our expertise in consumer law and policy analysis to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. Our work includes advocacy to reduce medical debt for consumers, and to assist consumers who struggle with medical debt in collections.

We are concerned about several aspects of the proposed TennCare III waiver. We agree with our advocacy partners, including the National Health Law Project and the Tennessee Justice Center, that the Tennessee Medicaid program should not be designed as a block grant,¹ should not impose an aggregate cap on spending, and should provide comprehensive coverage to children with special health care needs rather than requiring these children to enroll through commercial managed care organizations. These program designs would limit access to needed care, increase racial and health disparities,² and would result in more burdensome medical debt for low-income Tennessee families.³ Further, as explained below, we urge CMS to reject the state's request to again waive the 90-day retroactive eligibility period for Tennessee patients.

Despite the advances of the Affordable Care Act, medical debt continues to burden families across the country. The amount of medical debt nationally is estimated to be a staggering \$140

billion.⁴ In Tennessee, as elsewhere in the United States, medical debt has a disproportionate impact on families of color, with 30% of households in communities of color reporting medical debt in collections, compared with 20% of households in predominantly white communities.⁵ By comparison, 15% of all U.S. households have medical debt in collections.⁶

Tennessee's Medicaid Plan Should Reinstate Retroactive Coverage

Any waiver of the 90-day retrospective eligibility period for Tennessee Medicaid recipients would exacerbate the problem of medical debt in the state. CMS should deny this request and future requests to shorten or waive the 90-day retroactive period for Medicaid eligibility.

Retrospective Medicaid eligibility helps to protect the health and finances of low-income families and should be restored in Tennessee and elsewhere. Research has shown that, among many other positive benefits to low-income patients, access to Medicaid helps reduce the burden of medical debt.⁷ While the benefits of having coverage are apparent, there is no indication that eliminating retrospective eligibility serves any beneficial purpose for patients. Patients are not incentivized to sign up for Medicaid sooner when retroactive coverage is not available, because patients still may not be aware that they are eligible. In our experience, many patients first learn that they are eligible for Medicaid when they seek emergency medical treatment. Additionally, patients who learn that they may be eligible might need to spend weeks or months gathering the necessary documents to complete their applications. In these instances, eliminating retrospective eligibility merely shifts these health care costs to health care providers or to the patients themselves, increasing the patients' medical debts.⁸

Eliminating or shortening retroactive coverage subverts the objectives of the Medicaid Act because it "by definition, reduce[s] coverage" for people not currently enrolled in Medicaid.⁹ Without retroactive coverage, Medicaid beneficiaries forgo vital health care or may incur significant medical expenses.

To protect the public health and to shield low-income families from unnecessary medical debt, CMS should deny Tennessee's request and future requests from Tennessee and other states to waive or shorten the 90-day retroactive period of Medicaid eligibility.

Thank you for your attention to these comments. If you have questions, please contact Jenifer Bosco at jbosco@nclc.org.

Sincerely,

Jenifer Bosco
Attorney

¹ *The TennCare Block Grant Makes Health Disparities Worse*, TENN. JUSTICE CTR., <https://www.tnjustice.org/blockgrant/> (showing that at least 29.6% of Black Tennesseans are enrolled in TennCare, compared to 13.9% of white Tennesseans).

² See, e.g., Kinika Young, Tenn. Justice Ctr., *Rooted in Racism: An Analysis of Health Disparities in Tennessee* (2020), <https://www.tnjustice.org/wp-content/uploads/2020/07/Rooted-in-Racism-An-Analysis-of-Health-Disparities-in-Tennessee.pdf>; Bill Frist & Andre L. Churchwell, *Discrimination and Disparities in Health: Examination of Racial Inequality in Nashville*, TENNESSEAN (July 31, 2020), <https://www.tennessean.com/story/opinion/2020/07/31/examination-racial-inequality-nashvilles-healthcare/5540680002/>.

³ See, Raymond Kluender, PhD et al, Journal of the American Medical Assoc., *Medical Debt in the US, 2009-2020*, JAMA. 2021;326(3):250-256 (August 2021).

⁴ Raymond Kluender, PhD et al, Journal of the American Medical Assoc., *Medical Debt in the US, 2009-2020*, JAMA. 2021;326(3):250-256 (August 2021).

⁵ Urban Institute, *Debt in America: An Interactive Map*, Medical Debt (Tennessee) (March 31, 2021), available at https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_med&state=47.

⁶ Urban Institute, *Debt in America: An Interactive Map*, Medical Debt (National) (March 31, 2021), available at https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_med&state=47.

⁷ E.g., Kyle Caswell & Timothy Waidmann, *The Affordable Care Act Medical Expansions and Personal Finance*, Medical Care Research and Review, 2019, Vol. 76(5) 538–571, available at <https://doi.org/10.1177%2F1077558717725164>; Luojia Hu et al., *The Effect of the Patient Protection and Affordable Care Act Medicaid Expansions on Financial Wellbeing*, NBER Working Paper Series, Working Paper 22170 (Feb. 2018), available at https://www.nber.org/system/files/working_papers/w22170/w22170.pdf; Community Catalyst, *Linking Lack of Medicaid Expansion to Increased Medical Debt – An Unsurprising Connection, An Opportunity to Address It* (Aug. 5, 2021), available at <https://www.communitycatalyst.org/blog/linking-lack-of-medicaid-expansion-to-increased-medical-debt-an-unsurprising-connection-an-opportunity-to-address-it#.YTfTBZ5ueX2>.

⁸ See, *New Medicaid barrier: Waivers ending retrospective eligibility shift costs to providers, patients*, Modern Healthcare (Feb. 9, 2019).

⁹ *Stewart v. Azar*, 313 F. Supp. 3d 237, 265 (D.D.C. 2019).