



NATIONAL HEADQUARTERS
7 Winthrop Square, Boston, MA 02110
(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

October 6, 2022

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 Demonstration, Amendment 4

Dear Secretary Becerra:

Thank you for the opportunity to comment on Amendment 4 of Tennessee's TennCare III Demonstration application. The National Consumer Law Center (NCLC) is a nonprofit organization that uses its 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.

In previous comments filed on September 8, 2021, NCLC raised several concerns about aspects of the proposed TennCare III waiver, i.e., that the Tennessee Medicaid program should not waive the 90-day retroactive eligibility period for Medicaid applicants, should not be designed as a block grant, 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. In its current waiver application, Tennessee still seeks a waiver of retroactive coverage, and asks that the waiver remain in place for up to 10 year.

NCLC continues to oppose this request for waiver of retroactive Medicaid coverage, as well as similar requests in other states for the waiver of this important protection. We oppose this and

similar waivers because they serve only to exacerbate the problem of medical debt, compounding a pervasive problem and worsening the disproportionate harm to people of color, people with disabilities, and others who are overburdened with medical debt. Tennessee presents no compelling reason for this waiver. Further, the granting of these waivers is inconsistent with the Administration's policy goal of reducing the burden of medical debt on families.

Medical debt continues to harm Americans across the country, but medical debt is particularly burdensome in states like Tennessee that have not expanded their Medicaid programs¹ and lack additional protections for low-income patients such as a state financial assistance law.² Although the medical debt statistics are grimly familiar, they bear repeating here:

- In 2021, 58% of bills in collections and on consumer credit records were medical bills.³
- In Tennessee, it is estimated that 21% of adults in communities of color have medical debt in collections, and 17% of residents in white communities.⁴
- As found by the CFPB and others, Black and Hispanic people, young adults, and low-income individuals of all races and ethnicities, are more likely to have medical debt than the national average, and medical debt is more prevalent in the Southeastern and Southwestern regions of the U.S.⁵
- Adults with a disability are more likely than those without a disability to report owing over \$250 in medical debt (15% vs. 7%).⁶
- Adults with chronic conditions report higher amounts of medical debt.⁷
- At least one in eleven adults report delaying or forgoing medical care due to concerns about cost and debt.⁸

The federal Medicaid laws require retroactive coverage for services for three months if the applicant would have been eligible for Medicaid at that time.⁹ Waivers of retroactive Medicaid eligibility have not been demonstrated to help Medicaid recipients or Medicaid eligible consumers, despite shifting justifications for their use over the past decades.¹⁰ The TennCare III proposal to waive retroactive eligibility similarly would provide no clear benefit. Instead, it will increase the burden of medical debt on very poor patients who were not aware that they were eligible for coverage or for other patients who – because of Tennessee's refusal to expand Medicaid – only became eligible after they became able to document their disability, by which time they will have almost certainly have incurred major medical expenses. Eliminating retrospective eligibility merely shifts these health care costs to health care providers or to the patients themselves, increasing the patients' medical debts.¹¹

New applicants who would be protected by the retroactive coverage provision are a relatively small subset of all Medicaid recipients. The expenses associated with their care are unlikely to pose a significant burden to the state, but unpaid medical bills that result from a lack of

retroactive coverage can be financially devastating for the low-income patients who qualify for Medicaid.

Tennessee's arguments that it needs the waiver to allow for managed care payers to operate and that it has other methods in place are not convincing. In its proposal, Tennessee states the following:

Several commenters expressed concern about the TennCare demonstration's waiver of retroactive eligibility for certain populations; these commenters generally believed this waiver creates challenges for beneficiaries and providers. These commenters recommended that the state remove this waiver from the demonstration.

The state respectfully disagrees with these commenters' recommendation. The state's policy of beginning coverage on the day of an individual's application is *reasonable and necessary in order for the state to meaningfully manage the care of beneficiaries* (a key goal of the TennCare demonstration). In the decades that the state's policy has been in place, *the state has adopted a number of strategies to help ensure that individuals applying for care can in fact access such care quickly*; these include the use of presumptive eligibility processes for a number of populations, as well as partnerships with nursing facilities, hospitals, and other medical institutions to facilitate the timely submission of applications when needed. No changes were made to the amendment based on these comments.

Letter to Deputy Administrator Daniel Tsai, TennCare III Demonstration, Amendment 4, (August 30, 2022) (emphasis supplied).

However, the state does not need to eliminate retroactive coverage "in order for the state to meaningfully manage the care of beneficiaries." The state already provides retroactive eligibility to the more than half of the enrollee population comprised of children and pregnant or post-partum adults. Over the entire course of the TennCare project, Tennessee has continuously enrolled SSI beneficiaries whose SSI applications typically take an extended period to process and when finally approved require TennCare to backdate their coverage months or even years to the date of their SSI applications. The state's experience providing them retroactive coverage shows that the benefits of retroactive eligibility outweigh any purported concerns about managing their care. As the state does for those groups, it could protect the remaining adult patients by reimbursing patient expenses incurred during the 90-day retroactive period, and then implement a managed care plan from the date of enrollment. Instead, Tennessee proposes to leave these patients without assistance during the prior 90 days entirely.

The TennCare III proposal also asserts that “the state has adopted a number of strategies to help ensure that individuals applying for care can in fact access such care quickly.” But there would be no need for such strategies if TennCare followed federal law and the intent of the Medicaid program by providing retroactive coverage. Tennessee instead offers assurances that it has some methods for dealing with a problem that it created for itself, to the detriment of low-income families in the state.

Tennessee’s proposal provides no persuasive rationale for imposing this restriction on coverage. Tennessee instead offers flawed reasoning for cutting coverage for low-income patients, along with mere reassurance that it has taken some steps to mitigate the problem that the state itself created by applying for and obtaining the waiver of retroactive coverage. Rather than achieving any health policy goal or carrying out the intent of the Medicaid program, a waiver of retroactive coverage will likely increase racial and health disparities, and result in more burdensome medical debt for low-income Tennessee families.

The National Consumer Law Center and the low-income consumers who we serve have been heartened by the many steps that the current Administration has taken to reduce the burden of medical debt on families. Guidance and reports from the Consumer Financial Protection Bureau reinforce important consumer protections and have provided more insight into the problem of medical debt.¹² The Veterans’ Administration has announced measures to reduce VA medical debts on credit reports, among other measures to help veterans.¹³ As part of the Administration’s April 11, 2022 announcement regarding medical debt, you directed the Department of Health and Human Service to gather data related to provider billing and medical debt and consider these factors in its policy decisions.¹⁴ Granting this and other waivers of retroactive Medicaid eligibility would run counter to the Administration’s strong commitment to reducing the harm of medical debt.

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
Staff Attorney

-
- ¹ See, National Consumer Law Center, *The Racial Health and Wealth Gap: Impact of Medical Debt on Black Families* (Feb. 2022), available at <https://www.nclc.org/resources/the-racial-health-and-wealth-gap/>.
- ² National Consumer Law Center, *Ounce of Prevention* (Nov. 2021), available at <https://www.nclc.org/resources/report-an-ounce-of-prevention/>.
- ³ Consumer Financial Protection Bureau, *Medical Debt Burden in the United States* (Feb. 2022).
- ⁴ Urban Institute, *Debt in America: An Interactive Map, Medical Debt* (Tennessee) (June 23, 2022), available at <https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll>.
- ⁵ Consumer Financial Protection Bureau, *Medical Debt Burden in the United States* (Feb. 2022).
- ⁶ Kaiser Family Foundation, *Health Tracker: The burden of medical debt in the United States* (March 10, 2022), available at <https://www.kff.org/health-costs/press-release/1-in-10-adults-owe-medical-debt-with-millions-owing-more-than-10000/>.
- ⁷ Hamel, Liz, et. al. “The Burden of Medical Debt: Results from the Kaiser Family Foundation/ New York Times Medical Bills Survey.” Kaiser Family Foundation (Jan. 2016). Also, in a survey of people with “serious illness,” over 50% of respondents reported experiencing “dire financial consequences” related to their care, despite 9 out of 10 of them being insured. See Eric Schneider, Melinda Abrams, Arnav Shah, Corinne Lewis, and Tanya Shah. “Healthcare in America: The Experience of People with Serious Illness.” The Commonwealth Fund (Oct. 2018), 5.
- ⁸ Kaiser Family Foundation, *Access & Affordability, How does cost affect access to care?* (Jan. 14, 2022), available at <https://www.healthsystemtracker.org/chart-collection/cost-affect-access-care/>
- ⁹ 42 U.S.C. § 1396a(a)(34), see also id. § 1396d(a) (requiring retroactive coverage).
- ¹⁰ National Health Law Program, *Medicaid Retroactive Coverage: Stop these Waivers!* (Aug. 23, 2021), available at <https://healthlaw.org/resource/medicaid-retroactive-coverage-stop-these-waivers/>.
- ¹¹ See, *New Medicaid barrier: Waivers ending retrospective eligibility shift costs to providers, patients*, Modern Healthcare (Feb. 9, 2019).
- ¹² E.g., Consumer Financial Protection Bureau, Bulletin 2022-01: *Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act* (Jan. 13, 2022).
- ¹³ U.S. Department of Veterans Affairs, *Threshold for Reporting VA Debts to Consumer Reporting Agencies*, RIN 2900-AR20(P) (June 2021); U.S. Department of Veterans Affairs, *VA establishes new threshold for reporting benefit and medical debt* (June 2, 2022), available at <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5758>.
- ¹⁴ White House, *Fact Sheet: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection* (April 11, 2022).