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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

Also submitted via email: Seema.verma@cms.hhs.gov

RE: TennCare II Demonstration

Dear Administrator Verma:

On November 20, 2019, Tennessee submitted a document to the Centers for Medicare & Medicaid Services titled, "TennCare II Demonstration, Project No. 11-W-00151/4, Amendment 42." We are writing to ask that CMS ensure full transparency and meaningful comment for this substantial proposal.

Although the document is labelled an "Amendment," the text of the document requests significant reorganization of Tennessee's Medicaid program, affecting everything from the way the program is financed to the nature and extent of how services are delivered. We understand the state Medicaid agency was operating against a submission deadline set by a state law; however, the document is extremely vague on the specifics of what the State is proposing to do and how those proposals will affect stakeholders, from enrollees to managed care organizations. Without more information, we will be unable to submit meaningful comments on significant aspects of the project and believe this will be a problem for others as well. Simply put, it would not be possible for CMS to open this document to a notice and comment process that is "sufficient to ensure a meaningful level of public input," 42 U.S.C. § 1315(d)(2)(C), until such time as Tennessee revises its proposal to provide the public with more clarity as what it proposes to do.

Even if this document is considered an Amendment, there needs to be a meaningful public comment process. CMS has committed to this. See, e.g. CMS, *Re: Revised Review and Approval Process for Section 1115 Demonstrations 5* (Apr. 27, 2012) (SHO# 12-001). Such a process is also required by the Special Terms and Conditions of the approved TennCare waiver—conditions which, notably, are not been met by the State’s November 20th submission. See Letter to Gabe Roberts, Director, TennCare, from CMS Acting Deputy Admin. & Director, CMS-- Special Terms and Conditions III.7 at 14 (July 2, 2019).

The importance of meaningful public comment on this major transformation of Tennessee’s Medicaid program cannot be overemphasized. As the U.S. Government Accountability Office recently stated,

Without a policy with robust transparency requirements for amendment applications with significant impacts, there is the potential that states and CMS will fail to receive meaningful public input on the amendment and thereby lack complete understanding of the impact. As a result, CMS may not be positioned to mitigate any potential risks in the demonstrations being amended or when other states request to test similar policies in the future.

U.S. Government Accountability Office, *Medicaid Demonstrations: Approvals of Major Changes Need Increased Transparency* 24 (April 2019) (GAO 19-315).

Thus, we ask that you determine that Amendment 42 submitted on November 20, 2019 is an application for a new project, not an amendment. Furthermore, we ask that CMS not issue a letter of completeness until the State submits a waiver application with sufficient content and specificity to allow for meaningful public review and comment. Finally, even if CMS decides to view this submission as an amendment, we ask you to employ a robust public comment process in accordance with CMS policy and the waiver’s approved terms and conditions, and, as such, return the document to the State due to its lack of specificity and compliance with 42 C.F.R. § 431.408. There can be no meaningful public comment absent clear information from the State about what it is proposing to do. Thank you for considering this request.

Sincerely,



Jane Perkins
Legal Director

