

*brown v. board of education*50
years

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September 15, 2004

Honorable Phil Bredesen, Governor
First Floor, State Capitol
Nashville, TN 37243-0001

Re: The TennCare Program

Dear Governor Bredesen:

On behalf of the NAACP Legal Defense & Educational Fund, Inc. ("LDF"), I am writing to express my deep concern regarding the definition of "medically necessary" under recently enacted legislation modifying the TennCare program. LDF anticipates that this change could have serious and disproportionate adverse effects on the quality of health care available to low-income African Americans in Tennessee. We are also concerned that this new definition could establish a harmful precedent that would further depress the already substandard quality of health care generally available to minorities across the country.

As you know, new state legislation has redefined "medical necessity" for purposes of determining what medical services will be available to TennCare enrollees. This definition, which is in Section 22 of Chapter 673, Tennessee Public Acts of 2004, limits coverage to items or services that meet a highly restrictive set of criteria, including a requirement that they "must be the least costly alternative course of diagnosis or treatment that is adequate for the medical condition of the enrollee." This raises serious questions about whether only the cheapest treatments and services will be available to the state's poorest and most medically-underserved populations, irrespective of whether such treatments are the most effective for addressing a patient's medical needs. Further, the current legislation appears to give the TennCare Bureau or its managed care contractor sole discretion to decide whether a service is covered, without meaningful regard to widely accepted standards of medical care or appropriate deference to the professional judgment of the treating physician. The definition also contemplates that an "alternative course of treatment" may include "observation, lifestyle or behavioral changes," or "no treatment at all." This invites physicians and/or the TennCare Bureau and its contractors to apply a standard of care to an already vulnerable population that could threaten a patient's health and/or might have life-threatening consequences.

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The NAACP Legal Defense and Educational Fund, Inc. (LDF) is not a part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. LDF has had, since 1957, a separate board, program staff, office and budget. Contributions are deductible for U.S. income tax purposes.

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The new definition of medical necessity also establishes a standard that appears to be without precedent among either public or private payors of health care services. According to the Kaiser Commission on Medicaid and the Uninsured, the definition is "significantly more restrictive than the standards used by other public and private sector payors, including Medicare, Federal Employee Health Benefits contractors, and private sector plans." (See the Commission's Policy Brief entitled "Tennessee's New 'Medically Necessary' Standard: Uncovering the Insured?" (July 2004), available at <http://www.kff.org/medicaid/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=44707>.) This creates insurmountable health care barriers for a patient population that is already severely disadvantaged.

The impact of this legislative change will undoubtedly fall most heavily on the sickest TennCare enrollees, who are also the program's most vulnerable beneficiaries. As you know, the burden of chronic illness and poor health status more frequently befalls minority Americans. Moreover, I understand that forty percent of Tennessee's African Americans are enrolled in TennCare, and nearly half of all African-American children in the state rely on TennCare for their health coverage. In addition, African-American health care providers provide a disproportionately large share of the medical services provided to TennCare patients. This new definition threatens to place them in the untenable position of providing a level of treatment and care that is inconsistent with their professional judgment, sound medical practice and ethical standards.

This legislative change could set a precedent for other states across the country which would further depress the quality of health care available to low-income African Americans and other minorities. For this reason, I respectfully urge you to do all that you can to reestablish the original definition of "medically necessary" under the TennCare program and to adopt a standard that better ensures the quality of health care services available to your state's poorest citizens.

Respectfully submitted,



Theodore M. Shaw
President & Director-Counsel

TMS/EB/nc