

# Guidance on Comments for TennCare's Work Reporting Requirements Proposal

## ***Background and Status of Tennessee's Proposal***

The Tennessee Legislature has directed the Division of TennCare to seek a federal waiver requiring most parents of school-age children to regularly report their work hours to the state in order to keep their TennCare coverage. The state was required to solicit public comments before submitting the proposal to federal officials, and many of us submitted comments to TennCare last fall during the state comment period.

TennCare recently submitted [its proposal to the federal Centers for Medicare and Medicaid Services \(CMS\)](#). **A mandatory 30-day federal public comment period ends February 7, 2019. Even if you or your organization submitted comments to TennCare in the fall during the state comment period, you need to resubmit comments again now to CMS during the federal comment period.**

## ***Why Submitting Public Comments is So Important***

The federal courts have held that CMS must consider all comments. If CMS fails to do so, the proposal will be overturned. That's what happened to [Kentucky's similar proposal](#). Kentuckians generated 11,000 comments opposing their state's plan. Tennesseans need to do even better, in terms of both quantity and quality.

**Organizations and individuals must [submit their comments online at this site](#) by Thursday, February 7, 2019.**

## ***IMPORTANT ADVICE from national experts***

- 1. People who are exempt aren't necessarily protected!** Many will have to prove they are exempt, and that can be a bureaucratic nightmare.
- 2. People who are working may still lose coverage.** Some will lose TennCare because of barriers to documenting their work hours, or lack of cooperation by employers. Others will make too much to qualify for TennCare any longer, but their low wage jobs won't provide health coverage, and they'll be uninsured.
- 3. Tens of thousands will lose TennCare.** Based on [recent experience in Arkansas](#), which started phasing in a similar reporting requirement last year, **national experts anticipate that 100,000 Tennesseans will lose TennCare if CMS approves TN's proposal.** Complex administrative burdens on families, employers and the state put people at risk of losing their coverage even though they are eligible. In Arkansas, for example, many of those who were subject to reporting were able to overcome [computer and bureaucratic problems](#) to document their compliance. Tens of thousands of eligible Tennesseans recently lost TennCare during an eligibility redetermination process, due to daunting red tape (a particular risk for people with disabilities) and bureaucratic errors on the part of TennCare or its contractors.

## **When writing public comments opposing this harmful proposal:**

- **DON'T: Try to suggest "fixes" for a proposal that is inherently harmful and cannot be fixed.**
- **DO: Make clear that you unequivocally oppose the proposal and explain why.** Focus on the areas where you have experience or expertise. Submit data and research, if you have it, including actual articles to ensure they are considered. If you don't have data, just speak from personal experience and knowledge.
- **DO: Call the proposal what it is, a proposal to "take health coverage away from people who are unemployed."** This isn't about putting people to work, because most already work. It's a bureaucratic boondoggle that will deprive people of health care, which actually makes it harder for them to work.
- **DO: Point out lack of specifics about how TennCare's vague proposal will actually work.** For example, how will people show they are in an exempt group? How will TennCare implement this when it already has a record of computer problems and contractor errors? Explain the effects of loss of coverage for people with specific health care problems and needs.

Secretary Alex M. Azar, II  
United States Department of Health and Human Services  
Washington, DC  
*via electronic submission*

RE: TennCare Waiver Amendment 38

Dear Secretary Azar,

I am submitting the following comments in response to the public notice inviting public comments on proposed Waiver Amendment 38. *(Write a description of who you are, the constituency you represent, how you or your constituency would be impacted by the reporting requirement, and/or why you are concerned about this issue.)*

We are/I am unequivocally opposed to this proposal that would take health coverage away from people who do not work a set number of hours per month. The proposal will deprive eligible individuals of health coverage due to their inability, or the state's inability, to document their compliance with complex new administrative requirements. This proposal would cause immense harm and jeopardize coverage for thousands of Tennesseans.

*(Outline some of the harms that TennCare work reporting requirements would have.)*

- **What the waiver would do.** Failure to meet reporting requirements and paperwork errors will result in suspension of coverage for tens of thousands of Tennesseans.
- **Why the waiver would lead to large coverage losses.** Explain why people will lose coverage even though they remain eligible for TennCare. Reasons include TennCare's lack of a functioning computer system to determine eligibility, the barriers to working like lack of reliable transportation and child care, and barriers to reporting exemptions or number of hours worked. [Arkansas can be used as an example.](#)
- **Why these coverage losses will cause harm.** Explain why disruption of treatment or loss of access to health care would affect a particular group (e.g., cancer patients, people with addiction, people with diabetes, etc.)

In addition, this proposal leaves many unanswered questions. *(List out the ambiguities and missing details in the proposal, especially as it relates to you or your constituency or people you know.)*

- Some questions that can be raised:
  - How do people report compliance?
  - How can TennCare administer this complex eligibility determination without an eligibility determination computer system, which is not yet complete?
  - How will the reporting process accommodate people with disabilities, limited literacy or language?
  - What is "good cause" for waiving compliance by certain individuals?
  - What criteria will be used to exempt "economically distressed" counties?

I/people whom I serve/people whom I know would be negatively impacted by this proposal to take away coverage from people who don't meet the new work reporting requirement. *(Include stories of people who would be negatively impacted by this proposal and the harm that this proposal would cause. If you don't have a story, you can lay out a hypothetical of how someone could lose coverage even if they are working or "exempt.")*

This waiver is fundamentally flawed and cannot be fixed. It goes against the goals and purpose of the Medicaid program. We respectfully urge you to not go forward with this harmful proposal.

Sincerely,

(Name)

(title and organization, if applicable)