

Guidance for Organizations: Comments on TennCare’s Block Grant Waiver Proposal – Federal Comment Period

Background and Status of Tennessee’s Proposal

On November 27, 2019, the federal Centers for Medicare and Medicaid Services (CMS) posted for public comment a [request from Tennessee for a “waiver” converting TennCare \(TN’s Medicaid program\) into a block grant](#). That makes TN the first state in Medicaid’s 50-year history to seek such a radical change in its Medicaid partnership with the federal government. Until now, the federal government has covered almost two-thirds (65%) of the cost of TennCare services, with the total amount increasing as healthcare costs rise. The state provides the other 35%. In return, Tennessee and its managed care contractors must meet federal standards and respect federal patient safeguards. That would all change under the block grant, endangering vulnerable Tennesseans and inviting abuse by government contractors.

Why and How to Submit Public Comments

Organizations and individuals only have until **FRIDAY, DEC. 27, 2019 to [SUBMIT COMMENTS HERE](#) to CMS online.** It is *critically important* to submit comments to CMS unequivocally opposing the block grant waiver. 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 a [harmful Medicaid proposal in Kentucky](#). (CMS and reviewing courts will not consider comments that were submitted earlier during the state comment period, so please submit comments again as part of the federal comment period.)

Do’s and Don’ts for Comments

- **DO:** Make clear that you unequivocally oppose the proposal and explain why.
 - **DON’T:** Try to suggest “fixes” for a proposal that is inherently harmful and cannot be fixed.
- **DO:** Focus on the areas where you have experience or expertise, or that concern you the most. Comments should be as specific as possible and include data and research, if you have it. But if you don’t have studies, don’t worry. Speak from personal concern.
- **DO:** Ask questions about how TennCare’s vague proposal will actually work or what unclear provisions mean. For example, [according to Gov. Lee](#), the goal of this proposal is to generate \$2 billion in savings. If, as the proposal says, the state already “operates one of the most cost-effective Medicaid programs in the nation” (p. iii), where exactly will these “savings” come from?
- **REMEMBER:** Even if you commented during the state comment period, you must submit a comment again, because the federal government and courts only consider comments submitted during this federal comment period.

What changes did the state make to the earlier draft of the proposal?

Federal regulations required the state to hold public hearings and accept written comments on an earlier draft released in September. [Overwhelmingly negative public comments](#) prompted the state to make [two significant changes](#) in the final version submitted to CMS:

- Deleted a request for permission to cut benefits without federal review;
- Clarified that early and periodic screening, diagnosis and treatment (EPSDT) for children won’t change.

BUT, as explained below, ***the proposal’s most damaging features remain.***

Talking Points

1. The block grant proposal invites discrimination against patients with costly medical conditions.

Numerous provisions of the waiver strike hardest at care for patients with the greatest needs by:

- Making unprecedented cuts to prescription drug coverage, enabling the state to deny access to the most effective drugs for serious and costly illnesses like cancer and hepatitis;
- Eliminating federal Medicaid rules that prohibit discrimination on the basis of a patient's diagnosis or medical condition, thereby enabling TennCare to "target benefits to certain populations."
- Getting rid of rules that guarantee "parity" between medical and mental health conditions, thereby enabling TennCare to provide less treatment to patients with mental illness or addiction.

2. The block grant proposal puts ALL TennCare patients and services at risk.

TennCare covers 1.4 million vulnerable Tennesseans, including half of the state's kids, nearly two thirds of nursing home residents, uninsured women with breast cancer, and thousands of children and adults with severe disabilities. All patients must obtain their care from networks of doctors, hospitals and other providers that contract with managed care organizations (also known as MCOs). *By eliminating federal Medicaid managed care rules, the waiver would:*

- Let the *state* pay MCOs rates that are too low to cover the cost of patients' care;
- Let MCOs operate "hollow" provider networks that lack enough doctors, hospitals and other providers, and the full array of specialty care to meet patients' needs; and
- Leave *patients* unable to get vitally necessary care.

3. The block grant is a blank check to modify the program at any time, with no federal checks and balances.

Under this proposal, the state could, "Modify enrollment processes, service delivery system, and comparable program elements" without justifying the changes and getting federal approval. The state would be free to make it even more difficult than it already is to apply or maintain coverage, or to get medical services. TennCare has already demonstrated that it can save money just by erecting paperwork barriers, and this will give the state a free hand to double down on red tape. And who even knows what "comparable program elements" are that might be manipulated to make health care harder to get?!

4. The block grant threatens program integrity in a program that needs *more* accountability, not less.

Under this proposal, standards that *protect taxpayers* from government corruption and government contractor abuse would disappear. Those national safeguards were adopted partly in response to TennCare scandals 20 years ago. Political cronyism tainted TennCare. MCOs went bankrupt, leaving doctors unpaid, patients untreated and taxpayers holding the bag. [The waiver could bring back a time when hundreds of thousands of Tennesseans were cheated out of health care.](#)

TennCare remains a troubled program. The new TennCare Eligibility Determination System (TEDS) had [\\$400 million in cost overruns](#) and still has problems. Over two years, [TennCare cut off 200,000 children](#), the great majority of whom were still eligible. TennCare continues to wrongfully cut aid to low income elderly Medicare patients. TennCare needs more accountability, not less.

5. The block grant creates a powerful incentive to scrimp on patient care by allowing the state to divert TennCare “savings” into other parts of the state budget.

Gov. Lee’s goal for the block grant is [to obtain “upwards of \\$1 billion” in so-called “savings,”](#) with another \$1B going to the federal government, for total savings of \$2B.

- The waiver proposal says that TN will achieve \$2B in savings by managing TennCare more efficiently. But the feds aren’t likely to give TN that windfall at a time when President Trump wants to [cut \\$1.5 trillion from Medicaid](#). The proposal therefore includes alternative ways to make the \$2B goal, by eliminating managed care funding requirements, making unprecedented cuts to prescription drug coverage, and allowing discrimination against the costliest patients.
- The waiver would let the state cut TennCare and spend the resulting savings on anything related to the “health” of TennCare enrollees, from law enforcement to charter school subsidies.

The net effect is a transfer from patients and the healthcare system to the state government.

6. The block grant is a political gimmick, not a serious answer to Tennesseans’ real health concerns.

The waiver lists five “policy priorities” that would save and improve lives by, for example, expanding post-partum coverage for new mothers, providing treatment for addiction, and eliminating the wait list for services for people with intellectual and developmental disabilities. BUT the waiver *doesn’t commit to actually doing any of those things*. It just uses the priorities to promote the waiver, saying only that, if the waiver is approved and savings are available, the state “might” implement them. The problems on the “priorities” list are serious and deserve *a serious commitment to act*, and so do TN’s other urgent health needs:

- [TN is losing rural hospitals](#) at a faster rate than any other state;
- TN’s [loss of health coverage for kids](#) is among the worst in the nation;
- [Hundreds with addiction are dying](#) because they are uninsured and cannot afford treatment;
- [One third of TN adults have pre-existing conditions](#) and face the loss of affordable coverage if the TN Attorney General succeeds in his [effort to strike down the Affordable Care Act](#).

The block grant will only worsen these crises by diverting TennCare “savings” from healthcare.

Please see next page for a suggested template for your comments.

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

RE: TennCare Waiver Amendment 42

Dear Secretary Azar,

We are submitting the following comments in response to the public notice inviting public comments on proposed Waiver Amendment 42. *(Write a description of who you are, the constituency you represent, how you or your constituency would be impacted by the Medicaid block grant, and/or why you are concerned about this issue.)*

We are unequivocally opposed to this proposal that would radically change Tennessee's Medicaid partnership with the federal government by converting federal funding for TennCare into a "block grant." This proposal would cause immense harm and jeopardize coverage for vulnerable Tennesseans.

(Outline some of the harms that a Medicaid block grant would have.)

- 1. Emphasize the negative impact that the Medicaid block grant would have on the most vulnerable whom Medicaid was created to serve, and how they will bear the brunt of this proposal. See talking point #1 above for specifics about how this proposal invites discrimination against patients with costly medical conditions.*
- 2. Discuss the importance of TennCare for the people you work with, tell the stories of any individuals who need a lot of services, and talk about how harmful it would be if these services were cut. You might also talk about any problems your clients have had with TennCare, such as difficulty dealing with TennCare paperwork, experiences of being unable to see medical specialists or get adequate nursing hours, and/or any difficulty getting necessary prescriptions.*
- 3. Emphasize that the regulation of managed care organizations, including such features as network sufficiency, are vital to both patients and program integrity. Point out Tennessee's troubled history with managed care, and that it has a record of failing to respect patient rights. Learn more about this history here: <https://www.tnjustice.org/managedcarehistory/>*

In addition, this proposal is so vague that it fails to disclose information that is essential for providing an effective opportunity for public comment. *(List ambiguities and missing details in the proposal, especially as it relates to you or your constituency or people you know.)*

- For example, [according to Gov. Lee](#), the goal of this proposal is to generate \$2 billion in savings. If, as the proposal says, the state already "operates one of the most cost-effective Medicaid programs in the nation" (p. iii), where exactly will these "savings" come from?*

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

Sincerely,
(Name)
(title)
(organization)