

July 23, 2021

The Honorable Xavier Becerra, Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Dear Secretary Becerra:

The 34 undersigned organizations representing Medicaid advocates, patient groups, and provider organizations, are writing to urge you to take immediate action to protect the Medicaid program as well as hundreds of thousands of beneficiaries in Tennessee that rely on Medicaid for health coverage by rescinding SMD #20-001 and approval of the TennCare III demonstration.

On November 27, 2019, the Centers for Medicare & Medicaid Services (CMS) posted Tennessee's proposed block grant amendment to its TennCare II demonstration. CMS received almost 6,200 comments, the vast majority of which expressed strong opposition to the proposal, including numerous comments in opposition from national provider and patient groups.

On January 30, 2020, CMS, without notice and opportunity for comment, issued unprecedented guidance to states (SMD #20-001), called the "Healthy Adult Opportunity" initiative that authorized the use of section 1115 demonstration authority to impose aggregate caps on federal Medicaid spending in states covering adults with incomes up to 138 percent of the poverty line.

On January 8, 2021, CMS, just days before your Administration took office, CMS approved the TennCare III Demonstration, which imposes an aggregate cap on the state's Medicaid program for the next ten years. The approval letter notes that TennCare III "provides Tennessee with some similar flexibilities in exchange for managing its program under a funding ceiling and assuming some financial risk," that it would have had under the January 30, 2020 guidance if it covered adults with incomes up to 138 percent of the poverty line.

TennCare III does not promote the objectives of the Medicaid program; to the contrary, it "may reduce coverage under, or otherwise undermine Medicaid" in violation of E.O. 14009 issued by President Biden on February 2.

We strongly urge you to take the following actions:

- **Rescind SMD #20-001.** The financing structure for Medicaid has been in place since its enactment over 55 years ago. Participating states are entitled to federal matching payments for the costs of covered services on an open-ended basis; this ensures that the costs of providing health care and long-term services and supports for low-income Americans are equitably shared between the federal government and the states. There is no cap on federal matching payments in Title XIX of the Social Security Act, and section 1115 of the Act does not authorize the Secretary of HHS to impose one. This subregulatory guidance, issued without notice and comment, purports to allow the Secretary to impose a cap for purposes of a demonstration. In doing so, it undermines the fundamental objective of the Medicaid program—coverage—and should, consistent with E.O. 14009, be rescinded.

- **Rescind approval of TennCare III.** By imposing an aggregate cap on federal Medicaid matching payments to Tennessee for the next *ten* years, the TennCare III demonstration puts low-income Tennesseans at risk of a reduction in the health and long-term care coverage to which they are entitled. In doing so, TennCare III undermines the objective of the Medicaid program. This is precisely the type of demonstration that E.O. 14009 identifies as requiring careful scrutiny by the Secretary to determine whether it “may reduce coverage under, or otherwise undermine Medicaid.” We urge you to rescind approval of TennCare III and maintain coverage and benefits while giving the state an opportunity to propose an extension or new demonstration that does not undermine Medicaid.

If you need additional information please contact Joan Alker, Georgetown University Center for Children and Families ([jca25@georgetown.edu](mailto:jca25@georgetown.edu)) or Judith Solomon, Center on Budget and Policy Priorities ([solomon@cbpp.org](mailto:solomon@cbpp.org)).

Respectfully,

American Cancer Society Cancer Action Network  
American College of Obstetricians and Gynecologists (ACOG)  
American College of Physicians  
American Heart Association  
American Lung Association  
Arthritis Foundation  
Association for Community Affiliated Plans  
Autistic Self Advocacy Network  
Center for Health Law and Policy Innovation, Harvard Law School  
Center for Law and Social Policy  
Center on Budget and Policy Priorities  
Community Catalyst  
Cystic Fibrosis Foundation  
Epilepsy Foundation  
First Focus on Children  
Georgetown University Center for Children and Families  
Guttmacher Institute  
Hemophilia Federation of America  
Justice in Aging  
March of Dimes  
Medicare Rights Center  
National Alliance on Mental Illness  
National Association of Pediatric Nurse Practitioners  
National Family Planning & Reproductive Health Association  
National Health Care for the Homeless Council  
National Patient Advocate Foundation  
Planned Parenthood Federation of America  
Primary Care Development Corporation  
Service Employees International Union  
Susan G. Komen  
The AIDS Institute

The Jewish Federations of North America  
The Leukemia & Lymphoma Society  
United Way Worldwide