



'Lawsuit Over TN Funding Demo Paused As CMS Collects New Comments

By Michelle M. Stein / August 10, 2021 at 7:49 PM CMS on Tuesday (Aug. 10) said it will reopen comments for 30 days on Tennessee's controversial Medicaid funding demonstration after beneficiaries and their advocates sued. Many had expected the Biden administration would rescind the model, and beneficiary and patient advocates hope the comment period will lead the agency to reconsider the 10-year approval of the waiver.

Days before the Trump administration left office, former CMS Administrator Seema Verma touted Tennessee's 10-year capped funding demonstration as a possible national model while stressing that the Trump CMS changed the state's proposed financing mechanism for the demo and the waiver shouldn't be considered a block grant. Many expected the Biden administration to rescind CMS™ approval, and the National Health Law Program and Tennessee Justice Center in April sued to overturn the 11th-hour move by Trump's CMS.

Under the demonstration, Tennessee will get a capped funding amount for its Medicaid program and can reinvest savings it garners into other health programs. The waiver lets the state change its program without CMS approval, so long as the populations or benefits covered are additive in nature. The state must maintain the level of benefits and coverage that were in place at the end of 2020, the Trump administration's approval notice said. Tennessee also received approval for a closed drug formulary. The waiver is set to last 10 years.

The Biden HHS™ response in the lawsuit is due Aug. 27, as the administration had asked the court earlier this year for extra time to respond as it was familiarizing itself with the situation and considering whether any further action should be taken with respect to the January 8, 2021 decision challenged herein.

On Tuesday, the administration announced it would again seek feedback on the demonstration.

Counsel for the plaintiffs in the current federal court challenge to our approval of the demonstration offered to agree to hold that lawsuit in abeyance, if we opened a new federal public comment period. We determined that it would be valuable to provide a new opportunity for public input on demonstration terms currently approved for a ten-year period,• said Andrea Casart, Center for Medicaid and CHIP Services™ director for the division of eligibility and coverage demonstrations, in a letter to the state.

Jane Perkins, legal director at NHeLP, said the group hopes that after the new comment period closes, CMS will reevaluate the Tennessee waivers approval and decide the agency can't approve several of the features that are part of the lawsuit, including the funding limits. Perkins said the group expects CMS to seriously review the comments that it receives and has no reason to think it would do otherwise.

Twenty-one patient groups, including the American Cancer Society Cancer Action Network, slammed the demonstration when it was approved and Hilary Gee Goeckner, senior state and local campaigns manager for ACS CAN, said the group is happy the administration is reopening comments on the waiver.

Goeckner said the group will submit new comments at the federal level, and will urge CMS to reject changes to Medicaid funding as laid out in the waiver, as well as raise concerns with the closed drug formulary.

We are hopeful that the current administration will take action in the best interest of patients and Medicaid enrollees...and rescind approval for this dangerous waiver Goeckner said, adding that with the comment period reopening she is hopeful that CMS will heed advocates' concerns.

But state officials hope the Biden CMS will embrace closed drug formularies since federal Medicaid program chief Daniel Tsai pushed the idea while head of Massachusetts Medicaid program. -- Michelle M. Stein (mstein@iwnews.com)