October 4, 2022

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

Re: TennCare III Demonstration: Amendment 4

Dear Secretary Becerra:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the proposed amendment 4 to Tennessee's TennCare III demonstration. ACS CAN is making cancer a top priority for public officials and candidates at the federal, state, and local levels. ACS CAN empowers advocates across the country to make their voices heard and influence evidence-based public policy change, as well as legislative and regulatory solutions that will reduce the cancer burden. As the American Cancer Society's nonprofit, nonpartisan advocacy affiliate, ACS CAN is more determined than ever to end cancer as we know it, for everyone.

ACS CAN appreciates Tennessee's goal of promoting the health of low-income Tennesseans. We support the state's decision to eliminate plans for an aggregate funding cap and the adoption of a closed formulary. We oppose the state's plan to continue to waive retroactive coverage (especially for a 10-year period). More than 42,200 Tennesseans are expected to be diagnosed with cancer in 2022[1] and there are nearly 350,250 cancer survivors in the state[2] – many of whom are receiving health care coverage through the TennCare program.

ACS CAN wants to ensure that cancer patients and survivors in Tennessee will have adequate access and coverage under the Medicaid program, and that program requirements do not create barriers to care for low-income cancer patients, survivors, and those who will be diagnosed with cancer.

Financing Model

ACS CAN supports the state's eliminating the planned aggregate cap funding model. This plan would have fundamentally altered the Medicaid program in Tennessee, shifting the funding from a percentage match, whereby the program's funding adjusts automatically to account for the number of enrollees and rising health care costs, to one where annual funding for the program would be capped. Moving forward with the aggregate cap model could have significantly reduced low-income cancer patients', survivors', and their families' access to affordable, comprehensive health care in the state.

We do, however, have concerns about the changes Tennessee is now requesting regarding its designated state investment programs (DSIPs). The state's new proposed savings mechanism would allow the state to

[1] American Cancer Society. *Cancer Facts & Figures 2022*. Atlanta, GA: American Cancer Society; 2022.
[2] American Cancer Society. *Cancer Treatment & Survivorship Facts & Figures 2022-2024*. Atlanta, GA: American Cancer Society; 2022.

get all of the federal dollars under the budget neutrality cap without any quality or performance metric requirements to receive the money. Furthermore, this proposed funding structure incentivizes the state to cut current spending to receive the maximum allowable amount for the DSIPs. ACS CAN encourages CMS to continue to require Tennessee to meet CMS-determined quality metrics as a condition of receiving federal dollars. We also encourage CMS to set a stated maximum expenditure limit for the DSIPs rather than an open-ended limit so that the state is not overly incentivized to achieve program savings at the expense of beneficiary access to care.

Access to Prescription Drugs

ACS CAN strongly supports the state's decision to eliminate plans to adopt a closed formulary. There is no single oncology drug that is medically appropriate to treat all cancers. Cancer is not just one disease, but hundreds of diseases. Cancer tumors respond differently depending on the type of cancer, stage of diagnosis, and other factors. As such, oncology drugs often have different indications, different mechanisms of action, and different side effects – all of which need to be managed to fit the medical needs of an individual. Oncologists take into consideration multiple factors related to expected clinical benefit and risks of oncology therapies and the patient's clinical profile when making treatment decisions. For example, one fourth of cancer patients have a diagnosis of clinical depression,[3] which may be managed with pharmaceutical interventions that may limit cancer treatment options because of drug interactions or side effects. As such, when enrollees are in active cancer treatment, it can be particularly challenging to manage co-morbid conditions.

Allowing for the use of a closed formulary would have severely restricted a physician's ability to prescribe the medically appropriate treatment for an individual without going through a lengthy appeals process. Denying enrollees access to medically appropriate therapies can result in negative health outcomes, which can increase Medicaid costs in the form of higher physician and/or hospital services to address the negative health outcomes. We encourage CMS to continue to not allow states to implement closed formulary policies in Medicaid.

Program Lockout for Member Fraud

The state plans to suspend or terminate the eligibility of individuals who have been determined to be guilty of fraud and to prevent them from re-enrolling for up to 12 months. ACS CAN supports state efforts to reduce or eliminate fraud from health care programs. However, we are concerned that suspending or terminating the eligibility of individuals without a robust appeals process in place could place a substantial financial burden on enrollees and cause significant disruptions in care, particularly for individuals in active cancer treatment. During the proposed suspension or termination period, low-income cancer patients will likely have no access to health care coverage, making it difficult or impossible to continue treatment. For those cancer patients who are mid-treatment, a loss of health care coverage could seriously jeopardize their chance of survival. Being denied access to one's cancer care team could have a significant impact on an individual's cancer

[3] American Cancer Society, *Coping with Cancer: Anxiety, Fear, and Depression*. Available at https://www.cancer.org/treatment/treatments-and-side-effects/emotional-side-effects/anxiety-feardepression.html.

prognosis and the financial toll that the lock-out would have on individuals and their families could be devastating. Therefore, we urge CMS to require Tennessee to provide details of a robust appeals process before implementing plans to suspend or terminate the eligibility of individuals who have been determined to be guilty of fraud.

Waiver of Retroactive Eligibility

Medicaid currently allows retroactive coverage if: 1) an individual was unaware of his or her eligibility for coverage at the time a service was delivered; or 2) during the period prospective enrollees were preparing the required documentation and Medicaid enrollment application. Retroactive eligibility in Medicaid is a policy that prevents some of the most economically vulnerable individuals from incurring large and long-lasting amounts of medical debt. Policies that reduce or eliminate retroactive eligibility could place a substantial financial burden on enrollees and cause significant disruptions in care, particularly for individuals battling cancer. Therefore, we oppose the state's request to continue to waive retroactive eligibility. We urge CMS to reject this part of the waiver request.

Many uninsured or underinsured individuals who are newly diagnosed with a chronic condition already do not receive recommended services and follow-up care because of cost.[4,5] In 2019, three in ten uninsured adults went without care because of cost.[6] Waiving retroactive eligibility could mean even more people are unable to afford care and forgo necessary care due to cost.

Safety net hospitals and providers also rely on retroactive eligibility for reimbursement of provided services, allowing these facilities to keep the doors open. For example, the Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals to stabilize and treat individuals in their emergency room, regardless of their insurance status or ability to pay.[7] Retroactive eligibility allows hospitals to be reimbursed if the individual treated is eligible for Medicaid coverage. Likewise, Federally Qualified Health Centers (FQHCs) offer services to all persons, regardless of that person's ability to pay or insurance status.[8] Community health centers also play a large role in ensuring low-income individuals receive cancer screenings, helping to save the state of Tennessee from the high costs of later stage cancer diagnosis and treatment.

---

[4] Hadley J. Insurance coverage, medical care use, and short-term health changes following an unintentional injury or the onset of a chronic condition. *JAMA*. 2007; 297(10): 1073-84.

[5] Foutz J, Damico A, Squires E, Garfield R. The uninsured: A primer – Key facts about health insurance and the uninsured under the Affordable Care Act. *The Henry J Kaiser Family Foundation*. Published January 25, 2019. Accessed November 2019. https://www.kff.org/report-section/the-uninsured-a-primer-key-facts-about-health-insurance-and-the-uninsured-under-the-affordable-care-act-how-does-lack-of-insurance-affect-access-to-health-care/.

[3.] Tolbert J, Nov 06 ADP, 2020. Key Facts about the Uninsured Population. KFF. Published November 6, 2020. Accessed August 17, 2021. https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.

[7] Centers for Medicare & Medicaid Services. Emergency medical treatment & labor act (EMTALA). Updated March 2012. Accessed October 2019. https://www.cms.gov/regulations-and-guidance/legislation/emtala/.

[8] National Association of Community Health Centers. America's Health Centers' Snapshot. Published August 2021. Accessed August 2021. https://www.nachc.org/wp-content/uploads/2020/10/2021-Snapshot.pdf.

October 4, 2022

Conclusion

We appreciate the opportunity to provide comments on the latest amendment to the TennCare III Demonstration. The preservation of eligibility and coverage through the TennCare program remains critically important for many low-income Tennesseans who depend on the program for cancer and chronic disease prevention, early detection, diagnostic, and treatment services. We urge CMS to require the state reinstate retroactive eligibility and eliminate plans to lock out members charged with fraud in light of the potential impact these policies could have on low-income Tennesseans' access to lifesaving health care coverage, particularly those individuals with cancer, cancer survivors, and those who will be diagnosed with cancer during their lifetime.

Maintaining access to quality, affordable, accessible, and comprehensive health care coverage and services is a matter of life and survivorship for thousands of low-income cancer patients and survivors, and we look forward to working with the state to ensure that all people are positioned to win the fight against cancer. If you have any questions, please feel free to contact Jennifer Hoque at jennifer.hoque@cancer.org

Sincerely,

Kirsten Sloan
Managing Director, Public Policy
American Cancer Society Cancer Action Network

American Cancer Society Cancer Action Network
655 15th Street, NW, Suite 503, Washington, D.C. 20005
fightcancer.org | 1.202.661.5700