

February 5, 2016

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

Dear Secretary Burwell,

The undersigned organizations write in response to your request for public comments on Tennessee's proposed renewal of TennCare, its longstanding Section 1115 Medicaid demonstration program. Our comments are limited to the request to continue the waiver of retroactive eligibility and the length of the extension.

Retroactive Eligibility

Tennessee's current waiver of retroactive eligibility expires on June 30, 2016, unless an extension is granted in accordance with the terms and conditions of the demonstration project. The terms and conditions require that the state document in its interim evaluation report that changes in Tennessee's eligibility and enrollment process comply with the Affordable Care Act (ACA) and ensure seamless coverage between Medicaid and the Exchange (Paragraph 68). This information was intended to allow CMS to assess the ongoing need for retroactive coverage.

The interim evaluation report submitted with the extension request does not include an assessment of the ongoing need for retroactive coverage. It states that Tennessee has contracted for an assessment, and that the study is "currently being finalized." The state also makes broad claims as to the need for the waiver of retroactive coverage and claims that the waiver has worked well for 22 years without providing any evidence to that effect.

Whether or not the waiver has worked in the past is not relevant in any event, because the assessment was clearly intended to evaluate the impact of the waiver of retroactive coverage after implementation of the ACA. It is our understanding that Tennessee is the only state that is not accepting and processing applications at its Medicaid agency, which means that all state residents must apply through the Federally Facilitated Marketplace (FFM). It is also our understanding that Tennessee is not in compliance with federal standards for the timely determination of eligibility and that it is not transferring the cases of people whose income makes them ineligible for Medicaid to the FFM for a determination of their eligibility for subsidized Marketplace coverage. Thus, there is a significant possibility that eligible beneficiaries have unpaid Medicaid bills due to the waiver of retroactive coverage, and CMS should not extend the waiver until it has the results of the assessment required in the terms and conditions.

Length of Extension

Tennessee is requesting a five-year extension of its current demonstration project. Section 1115(e)(2) of the Social Security Act limits extensions to three years, so HHS should only provide a three-year extension to Tennessee.

Thank you for your willingness to consider our comments. If you would like any additional information, please contact Judy Solomon (Solomon@cbpp.org) or Joan Alker (jca25@georgetown.edu).