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February 5, 2016

*VIA ELECTRONIC SUBMISSION*

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

**RE:               Comments on Tennessee's Section 1115 Medicaid Waiver Extension Request  
(Project No. 11-W- 00151/4)**

Dear Secretary Burwell:

Eligibility Screening Services, LLC ("ESS") is an organization operating in Tennessee that assists low-income, uninsured patients and Tennessee families with application for federal and state programs such as Medicaid. ESS is an affiliate of Community Health Systems, Inc., a large hospital and healthcare company based in Franklin, Tennessee, whose subsidiaries operate nineteen hospitals in Tennessee. ESS partners with these hospitals and dozens of other providers throughout the state to help patients presenting for medically necessary care to enroll in TennCare or other programs for which they might be eligible. ESS contacts patients (or the patient's responsible party) to complete an evaluation for potential coverage and assists the patient with application for any identified programs. ESS also serves as the certifying body for Certified Application Counselors employed by ESS or affiliated hospitals. ESS submits these comments on behalf of providers in Tennessee regarding the impact of the State of Tennessee's request for a five-year extension to its current Section 1115 Medicaid waiver, titled TennCare II.<sup>1</sup>

While supporting an extension of the TennCare II program generally, ESS does not believe that Tennessee has provided any justification for its request to extend TennCare's exemption from providing retroactive eligibility, and is opposed to a continuation of the waiver of retroactive eligibility.

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<sup>1</sup> TennCare II Extension Request, *available at* <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/ta-tenncare-ii-pa-12222015.pdf>.

## **I. Background: Medicaid Agencies Must Provide Retroactive Coverage**

As part of its request for a five-year extension to the TennCare II demonstration, Tennessee requested a continuation of its waiver of the requirement to provide retroactive eligibility to TennCare beneficiaries beyond June 30, 2016 (rather than to allow such waiver to expire, as provided by the previously-approved demonstration). As discussed below, Tennessee has failed to provide any justification for this extension.

Federal law provides a clear directive to state Medicaid agencies that they must provide retroactive coverage to include three months prior to the month of the application, as long as the individual (i) receives services that would typically be covered under the plan, and (ii) would have been eligible for the program at the time they received the services if the applicant had applied.<sup>2</sup>

On June 16, 1993, TennCare submitted an application for a Section 1115 Demonstration Waiver,<sup>3</sup> which was approved. Included in this application was a request for a waiver of the above-described required retroactive coverage. As part of that application, TennCare indicated that because of its planned outreach efforts to notify existing and potential clients of the TennCare project and the incentives to enroll created by the standard benefits package, the State anticipated enrolling many of those who were then uninsured.

However, the number of uninsured patients that have been presenting for services indicates that many of the individuals eligible for coverage have not been enrolled.

## **II. Waiver Of Retroactive Coverage Not Consistent With CMS's Demonstration Objectives**

CMS uses certain guidelines to determine whether a Medicaid demonstration program's objectives are met. These "criteria include whether the demonstration will: (1) increase and strengthen overall coverage of low-income individuals in the state; (2) increase access to, stabilize, and strengthen providers and provider networks available to serve Medicaid and low-income populations in the state; (3) improve health outcomes for Medicaid and other low-income populations in the state; or (4) increase the efficiency and quality of care for Medicaid and other low-income populations through initiatives to transform service delivery networks."<sup>4</sup>

By not providing retroactive eligibility, TennCare has virtually eliminated the ability of low income individuals in the state to apply for and receive coverage for services received in the three month period prior to the date of enrollment. Tennessee providers are left to absorb the cost of the uninsured patient or attempt to collect the cost of those services from the patient. In some cases, the low-income patient will be required to set up a payment plan to pay for the services or risk going to collections. This problem is compounded by the legal limits placed on the amount providers can charge certain self-pay

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<sup>2</sup> 42 CFR § 435.915 (formerly designated as 42 CFR § 435.914)

<sup>3</sup> TennCare: A New Direction in Health Care 2 (1993) (Tennessee's TennCare waiver application); *see also* Ned McWherter. TennCare, A New Direction In Healthcare.1993. TS. Franklin, TN

<sup>4</sup> Section 1115 Demonstrations, *available* at <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/1115/section-1115-demonstrations.html>

patients: not only is TennCare shifting the cost of care to providers, it is limiting the providers' ability to recoup those costs.

The current TennCare proposal for a retroactive eligibility waiver states that the waiver is "fundamental to the state's ability to encourage individuals to seek care before they get sick and to prepare them for the time when they will be entering the world of Qualified Health Plans and commercial insurance, where retroactive eligibility does not exist."<sup>5</sup> This argument has a false premise and does not justify TennCare's position that they should be exempt from the general requirements in the statute and regulations. It assumes that individuals will seek preventive care and will plan far enough in advance to receive approval for coverage prior to utilizing preventive care services. In addition, any attempt by a patient to receive preventive care prior to enrollment would result in a TennCare application at that time to cover the services. The same waiver would prevent them from receiving coverage for the preventive visit, as it does for urgent or emergent care, unless it can be submitted on the actual date of service. Most providers are not equipped to be able to submit the application on the date of service. As a result, some non-emergency providers may turn a potential patient away for services until their application is approved, thus not providing care to an eligible individual. In states that provide for retroactive eligibility, providers may treat the patient, pending approval of the Medicaid application, and then apply for a retroactive authorization to submit a claim. Clearly, by failing to provide retroactive coverage, TennCare has failed to satisfy CMS's stated criteria for meeting demonstration program objectives.

TennCare's proposal also states that "it is impossible to demonstrate the value of managed care principles when neither the state nor its contractors (the MCCs) can identify the individuals whose care they are attempting to manage, which is the case with retroactive eligibility."<sup>6</sup> TennCare's position that retroactive eligibility makes it difficult to manage the care of individuals is no longer tenable. TennCare has had ample time to provide evidence that prohibiting retroactive enrollment causes individuals proactively to enroll. As federal law requires coverage of services retroactively for eligible individuals,<sup>7</sup> TennCare should no longer be able to prohibit payment to entities furnishing services for the 3-month retroactive period. Going forward, the funds allocated to TennCare should be used as originally intended by law, to include retroactive eligibility.<sup>8</sup>

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<sup>5</sup> TennCare II Extension Request, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/ta-tenncare-ii-pa-12222015.pdf>

<sup>6</sup> TennCare II Extension Request, p. 25, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/ta-tenncare-ii-pa-12222015.pdf>

<sup>7</sup> Title XIX of the Social Security Act authorized Federal grants to States for them to provide Medical Assistance to low-income individuals. The statute also states, "[p]ayments for services are made directly by the State to the individual or entities that furnish the services." 42 CFR § 430.0

<sup>8</sup> 42 CFR § 435.915

### **III. Lack Of Evidence Supporting An Extension Of The Wavier Of Retroactive Eligibility**

TennCare is required as part of its currently approved demonstration to evaluate the ongoing need for retroactive eligibility.<sup>9</sup> TennCare’s recent proposal to extend the waiver of retroactive eligibility is not supported by such documentation. It simply states that a contractor has been engaged to conduct a study that is being finalized.<sup>10</sup> As such, the extension request does not satisfy the evaluation requirements under the current demonstration, nor does it demonstrate a commitment by TennCare to understand the appropriateness of its request.

### **IV. The Request To Waive Retroactive Coverage is Inconsistent with Its Own Future Goals of TennCare**

In its extension request, TennCare lays out “future goals” for 2016-2021.<sup>11</sup> The goals set forth are “to provide services to Medicaid- and Demonstration-eligible enrollees that is cost effective, that assures appropriate access to high-quality care, and that ultimately improves health outcomes for program enrollees.”<sup>12</sup> However, because non-emergency care providers may turn patients away because of the lack of retroactive coverage until their application is approved, the goals of making high-quality care accessible and improving the health outcomes for enrollees will be undermined. TennCare accepts the benefit of the federal funding and should take responsibility for retroactive coverage that is required of Medicaid-participating states.

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<sup>9</sup> See paragraphs 68, 70 of CMS Special Terms and Conditions for TennCare II Medicaid Section 1115 Demonstrations approved from July 1, 2013 through June 20, 2016, available at <http://www.tn.gov/assets/entities/tenncare/attachments/tenncarewaiver.pdf>.

<sup>10</sup> TennCare II Extension Request, p. 25, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/ta-tenncare-ii-pa-12222015.pdf>

<sup>11</sup> TennCare II Extension Request, p. 22-23, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/ta-tenncare-ii-pa-12222015.pdf>

<sup>12</sup> TennCare II Extension Request, p. 22, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/ta-tenncare-ii-pa-12222015.pdf>

ESS has assisted thousands of residents in Tennessee and across the country with applications for state Medicaid programs. The organization has seen firsthand how allowing for the government stipulated three month retroactive eligibility period for applications can play a large part in meeting the goal of increasing and strengthening “overall coverage of low-income individuals in the state.” The retroactive eligibility period also assists in meeting the additional goal of strengthening providers and provider networks available to serve Medicaid and low-income populations in the state. To these ends, ESS requests that CMS carefully consider the impact of the decision to extend the retroactive eligibility application waiver on the uninsured individuals in the State of Tennessee, who will bear the greatest burden of uncovered medical expenses, and deny this request.

Respectfully submitted,



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W. Larry Cash  
President  
Eligibility Screening Services, LLC