



October 6, 2022

AIDS Foundation Chicago Comments Opposing the Continued Waiver of Retroactive Eligibility and Ten Year Time Period in the TennCare III Project

My name is Nadeen Israel and I am the Vice President of Policy & Advocacy at the AIDS Foundation Chicago (AFC). Thank you for the opportunity to submit these comments regarding the TennCare III Project Under Section 1115 of the Social Security Act. **AFC is opposed to the provisions within the TennCare III Project that continue to waive retroactive eligibility, and to the ten year waiver time period.**

AFC was founded in 1985 during the height of the HIV epidemic by advocates and physicians who saw institutional failing around them to support individuals living with and dying of AIDS. We have served our community for more than 35 years and have continued to expand beyond our initial scope to address other systemic barriers that make people vulnerable to HIV, including housing insecurity and substance use. The federal Medicaid program is estimated to cover 42% of adults living HIV, and while HIV can affect anyone, it has disproportionately impacted the LGBTQI+ community, as well as Black and Latinx communities.

TennCare III's waiver of retroactive coverage disproportionately impacts people of color.

As you well know, federal law generally requires states to cover medical expenses that eligible applicants incurred up to three months before enrolling in Medicaid. Congress enacted the law to provide some protection from medical debt. Waivers, like TennCare III, that excuse states from complying with the law leave thousands of families burdened with catastrophic medical debts that Congress intended for Medicaid to cover. The impact continues to be especially felt by people of color. Black families are nearly twice as likely as White families to obtain their health coverage through Medicaid. The denial of retroactive eligibility disproportionately falls upon Black households, making the waiver a federal policy that compounds racial inequities.

On his first day in office, President Biden issued an executive order on advancing racial equity that committed his Administration to "redress inequities in [federal] policies and programs that serve as barriers to equal opportunity." In April 2022, the President issued another executive order and fact sheet that noted the "devastating consequences" of accruing high medical debt and the disparate burden of medical debt on families of color, and that directed all federal agencies to take steps to "help reduce the burden of medical debt on households." The President has repeatedly reaffirmed those commitments. Withdrawing the TennCare III waiver of retroactive eligibility, is consistent with those commitments.

TennCare III sets a dangerous precedent for other Medicaid programs.

Section 1115 waivers are supposed to allow states to experiment with novel program components. But TennCare III's waiver of retroactive coverage is not novel or

experimental. It has no purpose other than to allow the state to save money at the expense of imposing often ruinous medical debt on Medicaid families. Generally speaking, CMS has exempted TennCare from providing retroactive eligibility since 1994, and extending the waiver won't produce any different outcomes than the harmful ones it has already produced. These types of waivers need to be stopped now.

Under the January 2021 approval, TennCare III would last for ten years. The length of the approval conflicts with Section 1115 and entrenches bad policy. If ratified by the Biden Administration, the approval would establish a precedent that will empower future administrations that share President Trump's hostility to Medicaid to use Section 1115 to fatally destabilize the program.

CMS has other tools available. If CMS determines that the waiver of retroactive eligibility should be phased out rather than immediately withdrawn, it should at least limit the waiver to a non-renewable extension of no more than 18 months. In addition, compliance with President Biden's executive orders means that any such extension must be conditioned upon safeguards to prevent disparate adverse racial effects or increased household medical debt. The extension should require Tennessee to:

- Survey new adult enrollees' experience on an ongoing basis to assess the loss of retroactive coverage on their accrual of medical debt and ability to access necessary medical care;
- Report the survey data, disaggregated by race and ethnicity, quarterly to CMS; and
- Agree to immediately reinstate retroactive eligibility if the state fails to obtain or report the required data, or if the data indicate that the waiver is adversely affecting enrollees.

Thank you for the opportunity to provide these comments opposing the continued waiver of retroactive eligibility and Ten Year Time Period in the TennCare III Project.

Sincerely,

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