Policy Matters Ohio

December 23, 2019

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

Dear Secretary Azar:

Thank you for the opportunity to comment on the TennCare II Demonstration proposal, Tennessee's proposed amendment to its section 1115 demonstration project. Policy Matters Ohio is a non-partisan, not-for profit research organization with a mission of building a more vibrant, equitable, inclusive and sustainable Ohio. If approved, this proposal would shrink state and federal health and human service programs, establishing a precedent that would endanger Ohioans. We strongly urge you to reject the proposal.

Tennessee's proposal would fundamentally transform Tennessee's Medicaid program by giving the state a block grant of federal dollars with significantly reduced federal oversight and accountability. It would alter the financing infrastructure of Medicaid, which is not allowed under the 1115 demonstration program, and encourage lawmakers to reduce funding for Medicaid. Medicaid Managed Care Organizations – the private entities that provide Medicaid services in many states – could be underfunded, and as a result might ration care, reduce provider networks and otherwise restrict access to health care. As such, it is directly counter to the primary purpose of Medicaid, which is to provide access to health care for low-income families and individuals.

Tennessee's proposal could not be approved under existing federal law. Section 1115 of the Social Security Act authorizes the Secretary of Health and Human Services to waive provisions in section 1902 of the Social Security Act, which defines whom states must (and can opt to) cover, among other items. Tennessee's proposal would go beyond this, altering Medicaid's financing structure, including the formula that sets out the rate at which states draw down federal Medicaid funds. The proposed change also would require a waiver of a provision in section 1903 of the Social Security Act, which governs how Medicaid is financed. Section 1115 does not give the Secretary authority to waive section 1903, so giving Tennessee a block grant or lump sum of federal funds is not allowable.

Tennessee's proposal removes the federal government from oversight of outcomes, which is also outside of the scope of section 1902. Eliminating federal oversight of demonstration programs threatens program integrity and beneficiary protections. For example, without federal oversight of MCO contracts, MCOs would not be responsible for ensuring their provider networks provide access to a full range of care within an appropriate geographic area. Without federal limits on Medicaid

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payments to psychiatric hospitals and related facilities ("Institutions for Mental Disease, or IMD) the state could provide payment for extended institutionalization of Medicaid enrollees, in violation of the rights under the *Olmstead v. L.C.* Supreme Court decision, and in conflict with federal law.[1] Without federal approval of MCO payment rates to ensure actuarial soundness, insufficient funding could force MCOs to ration care.

Tennessee's proposal works against Medicaid's central objective of providing affordable coverage to low-income people. The proposal would incentivize the state to limit enrollment and benefits. Under federal law, the federal government contributes 65 cents of every Medicaid dollar spent in Tennessee. Under the proposal, every $1 Tennessee "saves" on health services for eligible people allows them to keep half of those federal funds (About 33 cents) which could be used on other state services. This could be a strong incentive to reduce eligibility, curtail services, impose harsh requirements and otherwise severely limit access of poor and low-income people to health care which is – after all – the central objective of the Medicaid program.

Tennessee's proposal encourages lawmakers to shift funds away from health and human services. Tennessee could use federal funds "saved" in the health care system on anything it claims will improve health. That means it could use these funds to supplant current state spending on public health or social services. This would allow states to backfill such funding and shift state resources for virtually any purpose. It will create powerful new incentives for Tennessee to balance its budget by cutting TennCare in the next recession and prevent the state from meeting health care needs that rise as people lose jobs and private employer health coverage.

Congress already rejected the Medicaid financing approach of the Tennessee proposal. Congress has rejected giving states their Medicaid dollars in a lump sum or "block grant:" In 2017, Congress considered and rejected converting Medicaid to a block grant or per capita cap when such a change was a centerpiece of the failed effort to repeal the Affordable Care Act.[2]

Block granting Medicaid funding would prevent people from getting the health care they need. The 2020 budget proposed by President Trump would include the block granting of Medicaid and would cut nearly $1.4 trillion from Medicaid over 10 years.[3] Cuts of that magnitude would threaten health care for seniors, people with disabilities, or children with intensive medical needs and low-income families and individuals who are presently insured by Medicaid.

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[1] Olmstead v. L.C., 119 S.Ct. 2176, 1999; Social Security Act, § Section 1905(a)(B).
[2] ile:///Users/wpatton/Documents/Medicaid%20-%20Block%20granting%20Medicaid/Congressional%20letter%20HHS.2019.6.26..pdf
[3] Department of Health and Human Services, FY2020 Budget in Brief (www .hhs.gov/sites/de fault/files/fy-2020-budget-in-brief.pdf).

The proposal would hurt the health care system. The American Hospital Association said the deep cuts from such a proposal "would reduce federal Medicaid funding to unsustainable levels" and "will have serious negative consequences for communities across America."[4]

The threat to the health of low-income people of Tennessee is grave; the threat of precedence that this dangerous proposal poses to the people of Ohio is of deep concern. Ohio is one of the most unhealthy states in the nation, ranking 38th for overall health of the population.[5] While 81% of those who identify as white see a doctor routinely for health care, the rate is only 70% for blacks and 60% for Hispanics.[6] Disparities in health and health access exist across the geographic regions of the state. Nonelderly adults who live in Ohio's Appalachian counties are more likely to have unmet health needs and to consider themselves in poor health, than those in more urban counties.[7]

The TennCare II Demonstration proposal, Tennessee's proposed amendment to its section 11115 demonstration project, endangers Ohioans and all low-income Americans because it would set precedent that is not allowable under Social Security law, threatens other federal laws protecting the rights of people with disabilities, incentivizes the downsizing of state funding for health and human services and would shrink access to care for low-income families and individuals.

Thank you for your willingness to consider our comments. If you need additional information, please contact me at wpatton@policymattersohio.org

Sincerely,

Wendy Patton
Senior Project Director

[4] Senate Committee on Finance, Statement of the American Hospital Association, Hearing to Consider the Graham-Cassidy-Heller-Johnson Proposal, 115th Cong. (September 25, 2017).
[5] America's Health Rankings 2019: Annual Report, United Health Foundation at https://www.americashealthrankings.org/learn/reports/2019-annual-report
[6] "The Ohio Health Care Landscape," The Henry J. Kaiser Family Foundation at https://www.kff.org/medicaid/fact-sheet/the-ohio-health-care-landscape/#endnote_link_120446-29
[7] "Unhealthy Differences: Regional Health Disparities in Ohio," Health Policy Institute of Ohio, October 2009 at http://a5e8c023c8899218225edfa4b02e4d9734e01a28.gripelements.com/pdf/policybrief_disparitiesregional.pdf

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