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Congress of the United States
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IN EUROPE (U.S. HELSINKI COMMISSION)

January 13, 2021

The Honorable Joseph R. Biden
President-Elect of the United States
1401 Constitution Avenue NW
Washington, DC 20230

Dear President-Elect Biden,

I write to you with grave concerns regarding the Trump Administration’s decision to approve a block grant waiver to Tennessee for its Medicaid program. Allowing this implementation to go forward would be a grave mistake and a devastating blow to Tennesseans who rely on the state’s Medicaid program, TennCare, to meet their most basic needs. There is much to be done to repair the damage done by the Trump Administration and revoking the approval of this 1115 demonstration is an important first step to block further harm.

As you know, federal law prohibits the Secretary from changing the structure of Medicaid to both a block grant and a per capita cap. To waive specific sections of this law requires that the change be “likely to assist in the promotion of the objectives of Medicaid” -- otherwise known as providing medical assistance to eligible individuals.¹ Tennessee’s proposal would direct any surplus funding toward “policy priorities” rather than supporting Tennesseans with demonstrated need.

I am particularly alarmed that this waiver was approved for a ten-year demonstration. This would mean a decade during which Tennessee could fundamentally restructure Medicaid without Federal oversight despite its being a federally funded program. A shift in Medicaid implementation without oversight could mean a restructuring of who and what TennCare covers. The state could decide what prescription drugs are covered and cut benefits without consulting the Centers for Medicare and Medicaid Services (CMS). It could also change the scope and duration of the program without federal approval. The entire program could change based on the “policy priorities” of the state’s administration rather than prioritizing the 1.4 million Tennesseans who already utilize this critical resource. All of these components defy the fundamental purpose of Medicaid.

¹ Social Security Act, Pub. L. No. 74-271: § 1901.

The state also has an unfortunate history of wrongfully terminating coverage for TennCare recipients including children, seniors and adults with serious disabilities.² There is no evidence the state has an ability to responsibly allocate the federal funding it already receives, considering its ongoing determination to withhold over \$700 million dollars in TANF funding and failure to distribute school meal cards as the state's residents face one of the most dire economic circumstances in recent history.³

The Lee Administration has repeatedly failed to be competent stewards or good faith actors with the federal funding they already receive, and current CMS Administrator Seema Verma referred to this approval as an "experiment." To experiment with people's lives and health care during a public health crisis, national recession and an unprecedented challenge to reopen our economy safely is unconscionable. To allow a state to direct these programs with no accountability or oversight is unacceptable.

We know what works to lower health care costs in states. I was proud to vote for the Affordable Care Act during your tenure as Vice President, and I have encouraged Tennessee to expand Medicaid under the program ever since. Expanding Medicaid lowers costs and expands access to care, and there is no quantitate evidence that a block grant would aid those that the Medicaid program was designed to support.⁴

Given the concerns outlined, I urgently request that this harmful decision be reversed and that it is given the highest possible priority by your administration. Tennessee's current TennCare agreement is set to expire on June 30, 2020, and for the state to adequately prepare for continuity of its services, it is imperative that this waiver is quickly revoked.

I appreciate your consideration of this request and would be happy to provide additional insight or assistance. Please do not hesitate to contact my staff member, Merrilee Rogers, at Merrilee.Rogers@mail.house.gov or 202-770-5695 should you have any questions.

Sincerely,



Steve Cohen
Member of Congress

²Tennessee Justice Center Files Class Action Seeking Reinstatement of TennCare for Families Wrongfully Cut off by the State, Left Unprotected Against Pandemic. <https://www.tnjustice.org/tjc-files-class-action-pandemic-response/>.

³A year later, Tennessee's massive reserve for needy families is even larger, with no spending plan in place.

<https://www.tennessean.com/story/news/politics/2020/11/13/tennessee-families-first-massive-reserves-tanf-funds-larger-than-ever/6276920002/>

⁴ Medicaid Expansion Continues to Benefit State Budgets, Contrary to Critics' Claims. <https://www.cbpp.org/health/medicaid-expansion-continues-to-benefit-state-budgets-contrary-to-critics-claims#:~:text=Medicaid%20expansion%20will%20produce%20net,tax%20revenue%2C%20among%20other%20factors.>