

**STEVE COHEN**

9TH DISTRICT, TENNESSEE  
2104 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515

TELEPHONE: (202) 225-3265  
FAX: (202) 225-5663

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167 NORTH MAIN STREET  
SUITE 369  
MEMPHIS, TN 38103

TELEPHONE: (901) 544-4131  
FAX: (901) 544-4329

[WWW.COHEN.HOUSE.GOV](http://WWW.COHEN.HOUSE.GOV)

*Congress of the United States*  
*House of Representatives*  
*Washington, DC 20515-4209*

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September 8, 2021

Administrator Chiquita Brooks-LaSure  
Centers for Medicare and Medicaid Services (CMS)  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

Dear Administrator Brooks-LaSure,

I write to express my opposition to the TennCare III waiver. The waiver, which was approved in the final days of the Trump Administration without public comment, prioritizes frugality of managed care over the health and well-being of Tennesseans. Proceeding with the waiver would be a devastating blow to Tennesseans who rely on Medicaid to meet their most basic health needs.

Tennessee already has a long record of cutting Medicaid spending and services. It spent less on each full Medicaid benefit enrollee than every other state except for three (Georgia, Nevada and South Carolina).<sup>1</sup> With a life expectancy of 75.5 years, Tennessee is ranked 47<sup>th</sup> out of the 50 states plus Washington, DC.<sup>2</sup> It is also one of only a dozen states that has not expanded its Medicaid program under the Affordable Care Act; enrollment in TennCare is restricted to only the poorest and sickest citizens. Tennessee also requires most residents to enroll in managed care plans that use regulatory red tape to deny care to enrollees. Tennesseans who need timely care scarcely have the resources to fight with managed care organizations (MCOs), which take the position that a doctor’s order does not meet their standards of “medical necessity.”

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<sup>1</sup> Medicaid and CHIP Payment and Access Commission, “Medicaid Benefit Spending Per Full-Year Equivalent Enrollee by State and Eligibility Group, FY2018,” <https://www.macpac.gov/wp-content/uploads/2015/01/EXHIBIT-22.-Medicaid-Benefit-Spending-Per-Full-Year-Equivalent-Enrollee-by-State-and-Eligibility-Group-FY-2018.pdf>.

<sup>2</sup> Centers for Disease Control and Prevention, *National Vital Statistics Reports*, <https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-1-508.pdf>.

The TennCare III waiver would motivate MCOs to restrict treatment even more, since it would enact an aggregate cap on federal funding and allow Tennessee to direct unused federal Medicaid funds toward other “policy priorities.” This block grant funding structure creates a perverse incentive for the state to deny or delay care so that savings from cutting care could be diverted to lawmakers’ preferred projects. The funding cap could also erode TennCare over time as federal support fails to keep up with rising costs.

Another serious issue of concern is the continued waiver of retroactive eligibility. Retroactive eligibility is a long-standing Medicaid offering to cover medical expenses for three months prior to the application date. Offering retroactive eligibility safeguards family’s physical and financial health, especially when dealing with pressing health needs that prevent them from dealing with insurance issues. Without retroactive eligibility, a family could become saddled with medical debt before they are even able to enroll in Medicaid, which could harm a family’s ability to escape poverty and hamper future generations as well since medical debt is not eliminated by a patient’s death. Tennessee’s retroactive eligibility waiver has been in place for 27 years and needs a meaningful review before it should be allowed to continue by the TennCare III waiver.

The TennCare III waiver application also inexplicably does not include Graduate Medical Education funding, which is critical to recruiting and retaining doctors through residency programs in Tennessee hospitals. Without GME funding, Tennessee will be at a severe disadvantage. CMS and the State of Tennessee must come to an agreement quickly on how to resolve this oversight.

Additionally, I am alarmed that this waiver was approved for a ten-year demonstration. This would mean a decade during which the State of Tennessee could completely restructure its Medicaid program without federal oversight.

A shift in Medicaid implementation, with a perverse incentive to restrict health care and no oversight, could lead to a fundamental restructuring of who and what TennCare covers. The state could decide what prescription drugs are covered, cut benefits without consulting CMS, and change the scope and duration of the program without federal approval. The entire program could shift based on the “policy priorities” of the state’s administration rather than prioritizing the 1.4 million Tennesseans who already rely on this critical program. All of these components defy the fundamental purpose of Medicaid.

The block grant waiver might not be so concerning if the state did not already have an unfortunate history of wrongfully terminating coverage for TennCare recipients including children, seniors and adults with serious disabilities.<sup>3</sup> There is no evidence the state has an ability to responsibly allocate the federal funding it already receives. The state administration has repeatedly failed to be competent stewards or good-faith actors with the

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<sup>3</sup> Tennessee 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/>. See also Hannah Katch, Judith Solomon and Aviva Aron-Dine, “Tennessee Block Grant Proposal Threatens Care for Medicaid Beneficiaries,” <https://www.cbpp.org/research/health/tennessee-block-grant-proposal-threatens-care-for-medicaid-beneficiaries>.

federal funding they already receive – over the past three years, Tennessee’s eligibility redetermination process has terminated TennCare or CHIP coverage for 238,000 children, most of the time without even an actual finding that the children were ineligible.<sup>4</sup>

The previous CMS Administrator Seema Verma referred to the approval of the TennCare III waiver as an “experiment.” To experiment with people’s lives and health care, especially amidst a public health crisis, 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 and I have repeatedly encouraged Tennessee to expand Medicaid ever since. The decision not to expand Medicaid has become even more unreasonable following the passage of the American Rescue Plan, which further incentivizes expansion by offering non-expansion states more than four times the cost of expanding Medicaid for two years. Expanding Medicaid lowers costs, expands access to care, and helps keep hospitals open. There is no quantitative evidence that a block grant would aid those that the Medicaid program was designed to support.<sup>5</sup>

As always, I remain,

Most sincerely,



Steve Cohen  
Member of Congress

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<sup>4</sup> Tennessee Justice Center, “Bad Policy, Inept Performance: TennCare’s Management Track Record,” <https://www.tnjustice.org/tenncare-management-track-record/>.

<sup>5</sup> The Impact of Medicaid Expansion on States’ Budgets. <https://www.commonwealthfund.org/publications/issue-briefs/2020/may/impact-medicaid-expansion-states-budgets>.