



Charles N. Kahn III
President and CEO

December 27, 2019

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
Washington, DC 20201

RE: TennCare II Demonstration (No. 11-W-00151/4), Amendment 42.

Dear Administrator Verma:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 investor-owned or managed community hospitals and health systems throughout the United States, including in Tennessee. Our members – all of whom treat Medicaid patients - include teaching and non-teaching full-service local hospitals in urban and rural parts of the United States, as well as inpatient rehabilitation, psychiatric, long-term acute care, and cancer hospitals. We write to express our concern that no authority exists under federal law to permit the Centers for Medicare and Medicaid Services (CMS) to approve the State of Tennessee's request (Amendment 42) to amend its TennCare Demonstration to implement a Medicaid block grant.

The people served by Medicaid are diverse, with many beneficiaries facing complex and chronic health needs. For most, Medicaid is the sole health coverage option, and the lifeline to accessing providers and services to address their medical needs, long-term services and supports, and other related services that help restore their health. As noted by the Medicaid and CHIP Payment and Access Commission (MACPAC), "Medicaid is the foundation of the nation's health care safety net." A robust safety net is critical to ensuring these vulnerable populations have meaningful access to care.

Since its inception, Medicaid has been predicated on a partnership between the federal and state governments to provide a set of mutually defined benefits to an eligible population. Through this partnership, millions of Americans are able to enjoy access to life-saving health care services without the threat that the appropriate use and access to these services will be limited due to a lack of funding for the program.

Section 1115 allows States to waive any aspect of the State plan defined under section 1902 of the Social Security Act (the Act). Section 1115 waiver authority does not extend to Medicaid financing requirements described in section 1903 of the Act, including waivers of the federal medical assistance percentage and related sources of the required non-federal share of expenditures. To further amplify the limitation under current federal Medicaid law, there have been numerous federal legislative block grant proposals introduced over the past several decades. While none of those legislative proposals were enacted, they demonstrate that current federal law does not authorize any form of block grant under the Medicaid program. **As such, the FAH believes that any block grant proposal is inconsistent with the federal matching requirements under federal Medicaid law and cannot be approved by CMS.**

Consistent with this legal limitation, CMS has never utilized 1115 waiver authority to allow States to receive a lump sum, block grant payment to administer the Medicaid program. CMS has never approved any form of an 1115 waiver of the current Medicaid financing structure in which federal matching funds were made available absent an actual state expenditure. On the contrary, current federal Medicaid law requires States to incur and report allowable expenditures for statutory-defined federal financial participation.

Given that CMS has no authority to approve block grant proposals on a state-by-state basis, it is obliged to not approve the state's request. It is imperative that Federal funding for Medicaid remain stable and clearly dedicated to the program's mission enabling states to focus on maintaining coverage and ensuring access to care.

Thank you for the opportunity to comment. Should you have additional questions, please contact Paul Kidwell at (202) 624-1500.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Kidwell", written in a cursive style.