



Charles N. Kahn III
President and CEO

September 9, 2021

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

RE: TennCare III - Approval STCs Demonstration

Dear Administrator Brooks-LaSure:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC, and Puerto Rico, including 59 facilities and 7,147 beds in Tennessee. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

The FAH appreciates the Centers for Medicare and Medicaid Services' (CMS) decision to offer another opportunity for stakeholders to provide input on the special terms and conditions (STCs) of the final version of the State of Tennessee's TennCare III Medicaid demonstration program. The FAH commented on the proposed demonstration, and we remain concerned about the financial incentives created by the TennCare III demonstration's block grant funding mechanism approved on January 8, 2021.

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. Medicaid serves a diverse group of people in both urban and rural settings, with many beneficiaries facing complex

and chronic health needs. Medicaid is their only option to receive coverage for services to address their medical needs, long-term services and supports, and other related services that help restore their health. Medicaid can also be a key lever in addressing inequities in health care and a strong and fully funded Medicaid program will be essential for addressing health disparities in this vulnerable population – both in Tennessee and across the nation.

Medicaid is a partnership between the federal and state governments to provide a set of mutually defined benefits to an eligible, vulnerable population. Millions of Americans are able to enjoy access to life-saving health care services due to the relatively secure funding model that this federal-state partnership offers. We are concerned that the financial incentives that a block grant program envisioned in TennCare III could disrupt this partnership and the access it offers to vulnerable Medicaid populations.

As we described in our December 17, 2019 letter on the proposed TennCare III model, 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 Medicaid block grant mechanisms are inconsistent with the federal matching requirements under federal Medicaid law and cannot be approved by CMS.

Consistent with this legal limitation, CMS has historically not utilized 1115 waiver authority to allow States to receive a lump sum, block grant payment to administer the Medicaid program. CMS has required 1115 waiver models in which federal matching funds were made available only with an actual state expenditure. The TennCare III demonstration's "block grant" approach threatens this historic connection between federal funding and state Medicaid expenditures and could put access to care for eligible Tennessee residents at risk. There is no assurance that the program would not limit enrollment, reduce benefits, lower provider payments, or increase cost-sharing for patients as it could incentivize savings over patient needs. This is particularly concerning since the program would allow the State to generate "savings" by spending less on health care services under the program and then allow the State to spend those savings on items not directly related to health care and which would otherwise not qualify for Medicaid funding.

The TennCare III program also will allow the State to waive retroactive eligibility for many populations, so that an eligible person's coverage would begin on the date of their application instead of the date they became eligible. Medicaid eligibility is often triggered by catastrophic health events and removing retroactive eligibility would be financially devastating for both patients and the hospitals and clinicians who treat them.

Access to health coverage and quality care through Medicaid and the TennCare III program are essential for Tennessee's most vulnerable people. The demonstration's block grant

funding mechanism, however, poses a threat to the safety net in Tennessee. In light of that, as well as CMS's lack of authority to approve block grant proposals on a state-by-state-basis, CMS must reconsider its prior approval of the demonstration and work with Tennessee on a fundamental restructuring of its demonstration that rejects a block grant financing framework.

The FAH appreciates the opportunity to provide comment on CMS' request for input on the TennCare III demonstration. If you have any questions or would like to discuss further, please do not hesitate to contact me or a member of my staff at (202) 624-1534.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Kuntz". The signature is fluid and cursive, with a large initial "A" and "M".