



May 25, 2018

Judith Cash, Director
State Demonstrations Group
Centers for Medicare & Medicaid Services
Center for Medicaid and CHIP Services
Mail Stop: S2-26-06
7500 Security Boulevard
Baltimore, Maryland 21244-1850

RE: TennCare II Demonstration (No. 11-W-00151/4), Amendment #35

Dear Ms. Cash,

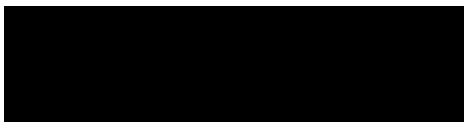
The purpose of this letter is to request a change to the TennCare Demonstration. This change will be Demonstration Amendment #35.

In Amendment #35, Tennessee proposes to amend its benefits package to allow the state to cover the full continuum of care for individuals with substance use disorder (SUD) treatment needs. Specifically, Tennessee requests authority to cover short-term SUD treatment services in facilities that meet the definition of an institution for mental diseases (IMD). This change will strengthen the state's ability to provide medically necessary care for individuals with SUDs in the settings most appropriate to their needs, and will complement the state's existing array of inpatient and outpatient SUD treatment services. The details of the state's proposal are described in the attached amendment request.

We will be glad to work with you and your team as you review Amendment #35. If you have questions about this amendment, please contact Aaron Butler at 615.507.6448, or aaron.c.butler@tn.gov.

Thank you for your attention to this important matter.

Sincerely,



Wendy Long, M.D., M.P.H.
Director

cc: Annie Hollis, TennCare Project Officer, CMS Baltimore
Tandra Hodges, Tennessee Coordinator, CMS Atlanta
Davida Kimble, Acting Associate Regional Administrator, CMS Atlanta

Amendment 35 to the TennCare II Demonstration

TennCare is a comprehensive managed care program that provides a full array of medical and behavioral health benefits to approximately 1.4 million Medicaid and demonstration eligibles in Tennessee. In Amendment 35, Tennessee proposes to amend its benefits package to allow the state to cover the full continuum of care for individuals with substance use disorder (SUD) treatment needs. Specifically, Tennessee requests expenditure authority to make capitation payments on behalf of individuals aged 21 through 64 who are receiving short-term SUD treatment services in facilities that meet the definition of an institution for mental diseases (IMD)¹.

The state's objective in seeking this expenditure authority is to maintain beneficiary access to SUD treatment services in appropriate settings and to ensure that individuals receive care in the settings most appropriate to their needs.

I. Description of the Amendment

TennCare has long provided a comprehensive array of inpatient and outpatient behavioral health services for members with mental health needs and/or substance use disorders. In 2009, these services were integrated into the state's MCO program so that one entity (the MCO) is responsible for coordinating each member's physical and behavioral health care. Until the issuance of the 2016 managed care rule, the MCOs contracted with the state were permitted to cover inpatient and residential SUD treatment services in IMDs in lieu of providing these services in facilities that were not IMDs, if the MCO determined that such care was medically appropriate and cost-effective as compared to State Plan-covered services.

The managed care rule issued by CMS in 2016 has forced the discontinuation of these "in lieu of" policies in Tennessee and many other states. This rule prohibits the state from claiming federal financial participation (FFP) for monthly capitation payments made by the state to a member's MCO if the member's stay in an IMD is longer than 15 days during a given month.²

The managed care rule, in effect, has created a gap in the state's benefits package, such that the state is no longer permitted to provide a comprehensive continuum of behavioral health care services for members with SUD treatment needs. These changes have the potential to disrupt TennCare's SUD treatment network and negatively impact access to care.

Tennessee's historical use of the "in lieu of" authority to provide SUD treatment services in IMDs has demonstrated both the cost-effectiveness and the clinical effectiveness of these services. While federal regulations allow states to provide inpatient services in non-IMD facilities, the state agrees with the general consensus of the provider and advocacy communities that acute hospital emergency departments and inpatient units are usually not the best setting in which to provide treatment for

¹ IMDs are inpatient facilities with more than 16 beds that are primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases. See Section 1905(i) of the Social Security Act.

² See 42 CFR § 438.6(e).

substance use disorders. Through its historical use of the IMD option, the state has demonstrated the effective use of IMDs as an important component of the Medicaid network, facilitating access to services in the most appropriate setting and complementing a variety of other service settings.

The state's request also aligns with recent recommendations issued by the President's Commission on Combating Drug Addiction and the Opioid Crisis.³ The Commission urged the administration to grant waivers of the IMD exclusion to all 50 states and emphasized that granting waivers of the IMD exclusion within the Medicaid program would be "the single fastest way to increase treatment availability across the nation."

Accordingly, the state requests expenditure authority under Section 1115 of the Social Security Act to cover SUD treatment services in facilities that meet the definition of IMD when medically appropriate. The state's proposal would allow enrollees to receive short-term services in IMDs beyond the 15-day limit in the managed care rule, up to 30 days per admission. The state will continue to emphasize delivery of care in the most appropriate setting, and seek to ensure that care is provided in less restrictive settings whenever possible.

This demonstration amendment will allow the state to continue operating a continuum of care that is sufficient in scope to address the prevention and treatment needs of the TennCare population and improve overall health and health outcomes.

II. Description of the Proposed Health Care Delivery System, Eligibility Requirements, Benefit Coverage, and Cost Sharing

The TennCare managed care program already covers inpatient and outpatient SUD treatment services for all enrollees (including services in IMDs when medically necessary for children younger than 21 and adults older than 64). The IMD services requested in this amendment will be added to the benefit package administered by the state's managed care contractors.

The demonstration's eligibility and cost sharing requirements are unaffected by this amendment. IMD services will be covered for all persons eligible for benefits under the TennCare demonstration, to the extent such services are determined to be medically necessary. There is no cost sharing for inpatient services in the TennCare demonstration.⁴

As noted above, the state's request will allow coverage of short-term services provided in IMDs for up to 30 days per admission. We note that this is the *de facto* level of coverage for short-term IMD stays permitted under 42 CFR § 438.6(e), should the beneficiary's admission span multiple months. The state believes strongly that covered services should be available to enrollees as medically necessary, and that such availability should not be arbitrarily limited by the calendar date of the enrollee's admission.

³ https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf

⁴ Certain children enrolled in TennCare have copays for inpatient stays based on their income. However, these children are not affected by Amendment 35. Adults have no copays for inpatient services.

III. Expected Impact on Enrollment and Expenditures

Amendment 35 will not result in any increase or decrease in enrollment in the TennCare demonstration.

Because the MCOs participating in the TennCare program have historically paid for short-term IMD services as a cost-effective alternative to covered services using “in lieu of” authority, Amendment 35 is not expected to have a material impact on expenditures under the demonstration, or to materially affect the state’s overall budget neutrality demonstration.

IV. Waiver and Expenditure Authorities Requested

All waiver and expenditure authorities currently approved for the TennCare demonstration will continue to be in effect. To implement Amendment 35, the state requests to add the following expenditure authority to the TennCare demonstration pursuant to Section 1115(a)(2) of the Social Security Act.

- #) Expenditures for short-term stays in institutions for mental diseases (IMDs). For expenditures for otherwise covered services furnished to eligible individuals who are receiving substance use disorder treatment services in facilities that meet the definition of an IMD. Expenditures are authorized for up to 30 days per admission.

V. Research Hypotheses and Evaluation

The state will work with CMS to identify or develop appropriate evaluation measures for this demonstration amendment. In developing these measures, it is important to note that the state is essentially requesting to maintain coverage of the same continuum of behavioral health care services that it previously offered under the “in lieu of” authority prior to the issuance of the 2016 managed care rule. The demonstration will test whether authorizing expenditures for services in IMDs will result in ensuring beneficiary access to SUD treatment services and that individuals receive care in the setting most appropriate to their needs.

VI. Documentation of Public Notice and Input

The state has used multiple mechanisms for notifying the public about Amendment 35 and for soliciting public input on the amendment. These public notice and input procedures are informed by—and comply with—the requirements specified at 42 CFR § 431.408.

The state’s public notice and comment period began on April 20, 2018, and lasted through May 21, 2018. During this time, a comprehensive description of the amendment to be submitted to CMS was made available for public review and comment on an amendment-specific webpage on the TennCare website. An abbreviated public notice—which included a summary description of Amendment 35; the locations, dates, and times of two public hearings; and a link to the full public notice on the state’s amendment-specific webpage—was published in the newspapers of widest circulation in Tennessee cities with a population of 50,000 or more. TennCare disseminated information about the proposed amendment, including a link to the relevant webpage, via its social media accounts (e.g., Facebook,

Twitter). TennCare also notified the members of the Tennessee General Assembly of Amendment 35 via an electronically transmitted letter.

The state held two public hearings to seek comments on Amendment 35. The first hearing took place on April 27, 2018, at 9:00 a.m. Central Time at the TennCare Building, 310 Great Circle Road in Nashville. The second public hearing took place on April 30, 2018, at 1:00 p.m. Central Time at the Phillips Education and Resource Learning (PEARL) Center of the Tennessee Department of Labor and Workforce Development, 220 French Landing Drive in Nashville. Telephonic access to the April 27 hearing was offered to individuals who were unable to attend in person and who notified the state of their desire to participate by telephone.

The state received no comments regarding Amendment 35 during the public notice and comment period. Tennessee has no federally recognized Indian tribes, Indian health programs, or urban Indian health organizations with which to consult or from which to seek advice.

Notice of Change in TennCare II Demonstration Amendment 35

The Commissioner of the Tennessee Department of Finance and Administration is providing official notification, pursuant to 42 CFR § 447.205 and 59 Fed. Reg. 49249, of intent to file an amendment to the TennCare II Demonstration. The amendment will be filed with the Centers for Medicare and Medicaid Services (CMS), a federal agency located in Baltimore, Maryland, with a Regional Office in Atlanta, Georgia.

The State is required to meet certain advance notice obligations whenever an amendment to the TennCare Demonstration is filed. This demonstration amendment, which will be known as “Amendment 35,” is being filed with the request that it become effective immediately upon approval.

In Amendment 35, Tennessee is requesting expenditure authority to pay for services provided to individuals ages 21 through 64 who are receiving short-term SUD treatment services in facilities that meet the definition of an institution for mental diseases (IMD) contained in Section 1905(i) of the Social Security Act.

Federal law prohibits the use of federal Medicaid funds to pay for services received by adults in settings that meet the definition of an IMD. However, the managed care organizations (MCOs) contracted with the TennCare program have historically been permitted to pay for services delivered in IMDs in lieu of paying for services in other settings, if the MCO determined that these services were medically necessary and cost-effective as compared to covered services.

CMS recently issued regulations limiting TennCare’s ability to provide residential SUD treatment services in instances when an individual may need treatment for more than 15 days in a month. Accordingly, in Amendment 35, TennCare will request authority to cover SUD treatment services in facilities that meet the definition of an IMD when medically necessary and appropriate. The state’s proposal would allow enrollees to receive short-term services in IMDs beyond the 15-day limit in federal regulation, up to 30 days per admission.

It is the State’s intention to submit this amendment to CMS with the request that it become effective immediately upon approval. Because the MCOs participating in the TennCare program have historically paid for short-term IMD services as a cost-effective alternative to covered services, Amendment 35 is not expected to have a material impact on expenditures under the TennCare Demonstration, or to materially affect the state’s overall budget neutrality demonstration.

The full public notice associated with this amendment, including a comprehensive description of the amendment, is available on the TennCare website at

<https://www.tn.gov/content/dam/tn/tenncare/documents2/Amendment35ComprehensiveNotice.pdf>.

Pursuant to 42 CFR § 431, Subpart G, the State is providing the following opportunities to the public to comment on the proposed amendment in person:

- A public hearing on April 27, 2018, at 9:00 a.m. CT in Conference Room 1 East A of the TennCare Building, 310 Great Circle Road in Nashville.
- A public hearing on April 30, 2018, at 1:00 p.m. CT in the PEARL Room on the ground floor of the Tennessee Department of Labor and Workforce Development, 220 French Landing Drive in Nashville.

Telephonic access to the April 27 hearing (in the TennCare Building) is available for individuals unable to attend in person. To register to participate in this hearing by telephone, please contact Jonathan Reeve by phone at (615) 507-6449 or by email at jonathan.reeve@tn.gov prior to the date of the hearing.

Individuals with disabilities or individuals with limited English proficiency who wish to participate in one of the hearings and who may require language or communication assistance to do so should contact Talley Olson of TennCare's Office of Civil Rights Compliance by phone at (855) 857-1673 or by email at HCFa.fairtreatment@tn.gov prior to the date of the hearing.

Members of the public who prefer to submit written comments may send them by mail to Dr. Wendy Long, Director, Division of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243, or by email to public.notice.tenncare@tn.gov. Persons wishing to review copies of written comments received may submit their requests to the same email and/or physical address. The last day on which comments will be accepted is Monday, May 21, 2018.

Copies of this notice will be available in each county office of the Tennessee Department of Health.

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-855-259-0701 (TTY: 1-800-848-0298).

We do not treat people in a different way because of their race, color, birth place, language, age, disability, religion, or sex.