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3793 Irvington Avenue
Miami, FL 33133
December 23, 2019

Seema Verma
Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Via electronic submission

Re: TennCare II Demonstration (No. 11-W-00151), Amendment 42

Dear Ms. Verma,

The Florida Health Justice Project (FHP) is a Florida based nonprofit. Our mission is to help ensure increased access to health care and improve health equity for Florida's most vulnerable populations. We appreciate the opportunity to comment, and we urge you to not approve Tennessee's TennCare II Demonstration, Amendment 42 request submitted to CMS on November 20, 2019 ("Waiver").

The Waiver application directly undermines the guarantee of coverage for those most vulnerable in Tennessee by proposing that the state be allowed to "[m]odify enrollment process, service delivery system, and comparable program elements without seeking additional CMS approvals via State Plan Amendments or demonstration amendments." The state suggests it will improve administrative efficiency in its Medicaid program if left unconstrained by "overly prescriptive and unnecessary federal regulations." At the same time, the state asks CMS to believe that, even though it will no longer be bound by federal regulations and enrollee protections, the proposal includes "[n]o reductions in who is eligible for" Medicaid in Tennessee.

In our decades of experience as advocates, it is these "overly prescriptive" federal regulations that ensure our clients maintain their eligibility.

Our organization submits these comments because we are gravely concerned that approval of the Tennessee waiver could encourage Florida to make a similar misguided request which would hurt the millions of vulnerable Floridians who rely on Medicaid. Floridians and Tennesseans are similarly situated. We are two of the few remaining states which rejected the opportunity to expand Medicaid coverage under the ACA to low income adults, and our two states also rely predominantly on managed care to administer Medicaid. Thus, we share the profound concerns of our Tennessee counterparts about how such a waiver would harm vulnerable state residents. These concerns include discharging individuals from the Medicaid program and drastically limiting services. Pursuing such a plan in Florida, as in Tennessee, reflects misguided hopes of saving money at the cost of residents' health and lives.

At FHJP, we work with advocates who rely on federal Medicaid protections to ensure that children, those with disabilities, and the elderly can access the healthcare they need through Florida's Medicaid managed care system. Because we know firsthand the devastating impact the Waiver could have on the most vulnerable managed care enrollees, we are obliged to reiterate and underscore concerns that have already been identified over the impact of Tennessee's proposal.

First, as noted above, Tennessee's waiver application asks that the state be left unconstrained by "overly prescriptive and unnecessary federal regulations." In our experience as advocates, it is these "overly prescriptive" federal regulations that ensure our clients maintain their eligibility. For example, we have represented numerous individuals erroneously disenrolled from Medicaid who risk tremendous harm if forced to experience a lapse in Medicaid coverage. It is only through federal regulation (and implementing state policy) that we can force the state to provide an expedited hearing and fix the error before the individual is hurt. Without that "overly prescriptive" regulation to force expedited state review of eligibility, our clients' health and welfare is gravely threatened.

Another example of why Floridians are concerned about the TennCare Wavier request, is the historic lack of transparency and accountability in our Medicaid Low Income Pool program. (LIP). Reviews over the last 10 years have flagged problems with Florida's LIP program. For example, in 2008 the Secretary of the Department of Health and Human Services (DHHS) was informed that the supplemental funding scheme was "problematic." U.S. Government Accountability Office, Medicaid Demonstration Waivers: Recent HHS Approvals Continue to Raise Cost and Oversight Concerns 28 (Jan. 2008) (GAO-08-87) (finding federal spending under the Florida LIP "problematic" and that DHHS had not ensured the "fiscal integrity" of the Medicaid program); *see also*, GAO, Medicaid Demonstration Waivers: Approval Process Raises Cost Concerns and Lacks Transparency 14-17 (June 2013) (GAO-13-384) (raising similar concerns with similar pooling arrangements in Texas); Navigant Healthcare, Study of Hospital Funding and Payment Methodologies for Florida Medicaid, Prepared for: Florida Agency for Health Care Administration, at 24-25, 142, 181 (Feb. 27, 2015) (noting the lack of monitoring) [hereinafter the Navigant Report]that were not in accordance with the waiver and applicable federal regulations." As a result, OIG recommended that Florida refund $412 Million to the federal government.2. And recently, the DHHS Office of Inspector General found that Florida paid hundreds of millions of dollars to a Miami safety net hospital that were not in accordance with the waiver and applicable federal regulations." As a result, OIG recommended that Florida refund $412 Million to the federal government."[i]

Additionally, the Waiver specifically proposes to eliminate federal standards related to the administration and oversight of Medicaid managed care found at 42 C.F.R. section 438. Much like the regulations Florida advocates rely on in safeguarding our clients' continued Medicaid eligibility, we rely on 42 C.F.R. 438 (as adopted through state contracts with managed care plans) to safeguard the right to access quality medical care.

For example, in the past several months alone, the federal standards set forth in section 438, have been relied on by FHJP's undersigned Legal Director to:

- help secure expedited repairs to a hospital bed for a medically fragile child that was missing a wheel and posed a serious safety risk;
- reinstate monthly port flushes for two children with cystic fibrosis who otherwise risked occlusions that could lead to death; and

- secure discharge of a medically fragile child from a hospital whose stay was delayed by the managed care plan' failure to arrange for medical services in the community.

Federal oversight of Medicaid managed care must be strengthened, not stripped. Recently, in *Texas, Centene Health*, a for-profit Medicaid managed care plan was exposed in a multi-series investigative report by the Dallas Morning News about its practice of denying care to chronically ill and disabled children, including those in foster care, and, in at least one instance, actions that left a child in a permanent vegetative state.[ii] After the expose was published, administrators at both the federal and state level called for enhanced scrutiny of corporate handling of state Medicaid dollars.

The example in Texas raises grave concerns that at least some managed care plans cannot be trusted to administer Medicaid dollars in the best interest of its enrollees. Notably, an investigative report published in 2016 showed similar problems in Florida's managed care system.[iii] These case studies demonstrate that eliminating oversight and enrollees' individual protections, as is proposed by Tennessee, would lead to significant reduction in quality medical care for the most vulnerable populations. It would be problematic to reduce the already minimal oversight of corporate entities in their handling of the millions of taxpayer dollars dedicated to providing of medically necessary care for vulnerable individuals.

We respectfully request that the Agency genuinely consider these comments in light of Medicaid's mission. If CMS's goal is to eliminate otherwise eligible individuals from Medicaid and to significantly curtail medical services to those who are the most vulnerable, this waiver will succeed in that goal. We very much hope that, instead, CMS's goal is to ensure, through its continued use of effective oversight mechanisms, that states and managed care plans responsibly spend federal dollars to maximize health outcomes for Medicaid enrollees. Accordingly, we respectfully request that you and thus will reject this waiver as a grievous step in the wrong direction of meeting that goal. Thank you for your consideration.

Respectfully submitted,

s/Katy DeBriere

Katy DeBriere
Legal Director

s/Miriam Harmatz

Miriam Harmatz
Executive Director

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[i] Office of Inspector General, available at https://oig.hhs.gov/oas/reports/region4/41704058.pdf.
[ii] *Pain & Profit* Series, Dallas Morning News, accessed at: https://interactives.dallasnews.com/2018/pain-and-profit/
[iii] *2 Millions Kids* Series, Sarasota Herald Tribune, accessed at: http://medicaid.heraldtribune.com/2-million-kids-24-billion-battle/