The following remarks and recommendations are submitted on behalf of the League of Women Voters of Tennessee (LWV-TN) in response to the request for public comment by the Centers for Medicare and Medicaid Services (CMS)/ U.S. Department of Human Services, regarding the TennCare II Demonstration, Project No. 11-W-00151/4, Amendment 42, also known as the Block Grant Waiver,[1] submitted on November 20, 2019.

SUMMARY

The LWV-TN believes that Amendment 42, as proposed, threatens the long-term financial viability of Tennessee's Medicaid program, TennCare, and has the potential to harm current and future TennCare beneficiaries. We have organized our significant concerns under the subheadings below:

- Unnecessarily risky and complex policy changes focused more on program financing than demonstration project outcomes
- Perverse incentives to decrease per person expenditures for non-optional Medicaid recipients
- Overbroad state flexibility to limit scope, amount, and duration of current benefits and to restrict cost and choice of covered medications without sufficient public oversight or accountability
- Inadequately defined metrics that limit the ability to assess the impacts, positive or negative, of this major policy change on the health access and outcomes for TennCare recipients
- Failure to address Tennessee's health coverage gap which has resulted in serious problems for individual and public health and is contributing to high rates of hospital closures in rural areas
- Inappropriate application of the block-grant financing to non-optional Medicaid recipients in apparent conflict with federal law and policy that is likely to trigger prolonged litigation, at high cost to federal and state governments

The League of Women Voters opposes changes to federal financing of TennCare proposed in Amendment 42 for the following reasons:

- **Unnecessarily risky and complex policy changes focused more on program financing than project outcomes**

Changing federal financing of Tennessee's Medicaid program from a guaranteed entitlement to a capped allotment (block grant) would incur potentially higher costs to our state government, while creating health risks for vulnerable people who currently qualify for TennCare (children, custodial adults, people with disabilities, and elderly nursing home residents).[2,3,4]

Under the proposed block grant waiver, if TennCare expenditures were to exceed baseline costs for core Medicaid services calculated under the proposed new formula, the state would be responsible for the full excess amount. This could result in cuts to current benefit levels for covered populations. It could also have spillover effects for populations or services not initially included in the block grant (e.g., individuals with intellectual disabilities, children in foster care, dual Medicaid-Medicare eligibles, DSH payments to hospitals for uncompensated care, outpatient pharmacy benefits).

While the funding formula proposed in Amendment 42 makes allowances for changes in numbers of Tennesseans eligible for the program and indexes the per capita block grant amount to inflation, affording some fiscal protection during recessions, TennCare acknowledges that in order to maintain budget neutrality current benefits may need to be restricted and has requested broad flexibility to limit services "in scope, amount, or duration" as well as flexibility to reduce pharmacy costs by limiting prescription drug options on the TennCare formulary.

- **Perverse incentives to decrease per person expenditures for non-optional Medicaid recipients**

Any year in which the state does not spend the entire federal block grant, the state would retain 50 percent of unspent federal funds provided by the block grant that could be reinvested in health-related supports for unspecified target populations. This proposed funding arrangement creates a potentially perverse incentive for the state to decrease the per member per month (PMPM) expenditures for categorically [non-optional] eligible recipients. Despite the waiver proposal's assurance that there will be "no reductions in who is eligible [for TennCare] or what benefits are currently provided," it is likely that significant savings can be realized only by reducing the scope, amount and duration of current benefits, or by reducing capitation rates for MCOs and/or reimbursements for providers which would impact network adequacy and access. For non-optional Medicaid populations, this should not be permitted without approval and oversight from the federal government.

The block grant request is based on the premise that TennCare is more "efficient" than other state Medicaid programs and the "savings" TennCare has provided to the federal government are due to the program's greater efficiency, accomplished over many years through managed care. TennCare delegates responsibility for care coordination to managed care organizations and often relies on non-profit organizations across the state to supplement case management and wrap-around services that many other state Medicaid agencies themselves provide. Other states offer broader health services than Tennessee and cover additional populations. Tennessee this year became the last state in the union to provide Katie Beckett waiver supports to medically fragile children with complex health problems who would otherwise not meet state Medicaid income eligibility criteria, and Tennessee remains one of only a handful of states that does not provide dental coverage to adults. TennCare has been innovating with value-based episodes of care payment, but also remains one of the lowest in the nation in the Fee For Service rates it pays health providers and hospitals.[6] It is difficult to imagine how additional cuts in PMPM can be made without impacting services or access.

Tennessee also remains in the lowest quartile of states in the USA with respect to significant population health indicators, including maternal mortality, low birth weight babies, adult obesity, incidence and prevalence of diabetes and cardiovascular disease, and cancer mortality rates.[7] Although TennCare is not solely responsible for these poor public health outcomes, our state's persistently low health rankings call into question whether Tennessee is actually spending *enough* on caring for low-income people. While Amendment 42 characterizes the state's plan for retention of 50% of the amount it saves the federal government going forward as a positive development for the state, advocates who work with the TennCare population are nearly unanimous in their agreement that TennCare needs to invest more, not less, up front in PMPM expenditures for enhanced services and increased access, particularly in rural areas of Tennessee.

TennCare proposes to reinvest any savings from underspent PMPM expenditures in health-related supports for (unspecified) target populations. The LWV-TN welcomes additional investments in health supports and wrap-around services. However, there is nothing in the current financing mechanism and waiver authority to preclude TennCare from doing this now, and if those supports are truly needed to improve health outcomes, our state should already be making those investments.

The League of Women Voters of Tennessee believes the Amendment's narrow emphasis on efficiency could also be counter-productive, restricting important services and options needed to meet current health needs of beneficiaries. CMS should not approve this Amendment without clearer documentation of specific outcome measures to assess the *effectiveness* of this significant financing policy change. CMS needs to insist, as discussed further below, that TennCare clearly track beneficiary outcomes before and after this change and link any changes, positive or negative, to the new financing mechanism. Before launching this experimental waiver, there should also be systems in place to enable CMS to make a thorough assessment of where TennCare "efficiencies" are being achieved in comparison with other state Medicaid programs, and how TennCare recipients' health outcomes compare with those of Medicaid recipients in states with higher per-capita costs. This is the only way that public policy makers can ultimately determine whether the modified block grant proposed by Tennessee has the potential to be a better deal for the American people than the Medicaid program that has evolved over the last 50 years.

- **Overbroad state flexibility to limit scope, amount, and duration of current benefits and to restrict cost and choice of covered medications without enough oversight and public accountability**

Amendment 42 requests broad flexibility and relief from CMS regulations but specifies no mechanisms for clinical or administrative oversight by entities other than the state TennCare bureaucracy or the state legislature. This amounts to a lack of state and federal accountability for the use of taxpayer dollars allotted to TennCare. Our state is currently reeling from the discovery that under a TANF Block Grant mechanism, the Department of Human Services somehow accumulated over $730 million in reserves that were sorely needed by thousands of Tennessee families and children. It is vital for CMS to

retain a significant level of federal oversight especially during implementation of this experiment, if it is approved.

One specific projected source of additional "savings" discussed in the Amendment would be achieved by limiting the current Medicaid formulary to the least expensive medications in each therapeutic class. The prospect of new formulary restrictions has raised a great deal of public concern in our state, particularly among individuals with chronic conditions. There is considerable genetic variation in the ability to metabolize and tolerate medications, and the least expensive medications are not always the most cost-effective. Some individuals may even experience serious side effects from medications that are considered safe for the general population. The focus on limiting the cost of medications rather than on promoting effectiveness is clinically short-sighted.

It is important for CMS to specify and monitor a transparent process for independent and expedited clinical review of cases involving enrollees whose medical needs might require exemption from formulary limitations or benefit adjustments triggered under a block grant framework. There should also be an objective, independent process for reviewing over time how appeals for exemption are resolved and their clinical impact. The League of Women Voters of Tennessee urges CMS to require TennCare to convene a non-partisan oversight commission composed of health professionals and representatives of recipient groups to assure that any decisions to alter the TennCare program benefits are based not only on cost, but also clinical effectiveness, and to evaluate how appeals are resolved. Should this amendment be approved, the review commission should also evaluate proposals regarding how to reinvest savings. Given that Medicaid is intended to be a federal/state partnership, the LWV-TN respectfully recommends that *under no circumstances* should this waiver and the flexibility of TennCare to operate outside of current CMS regulations and guidance be made permanent.

- **Inadequately defined metrics that limit the ability to assess the impacts, positive or negative, of this major policy change on the health access and outcomes for TennCare recipients**

Amendment 42 asserts that the State's evaluation will focus on “1) the extent to which TennCare expenditures grow under the block grant, as compared to the growth of Medicaid expenditures nationally, and 2) the extent to which the interventions implemented by the State under the block grant are successful in improving access to care and health outcomes for members.” However, no measures are currently specified for monitoring changes in health outcomes or health care access. The waiver proposal notes only that the state intends to contract with an independent evaluator to develop a plan for evaluating these goals and will identify appropriate performance measures to assess the impact of the demonstration in consultation with this evaluator and CMS.

The League of Women Voters of Tennessee contends that, at a minimum, TennCare should provide CMS with baseline data on the TennCare population, using both process measures and outcome measures, during the same three-year period (2016 – 2018) on which average TennCare expenditures are based in

the block grant waiver proposal. TennCare should also articulate the metrics it plans to use to evaluate the impact of the proposed demonstration project before any approval is considered. Metrics proposed should enable comparison of TennCare performance and outcomes under the block grant (if approved) with performance and outcomes *before* implementation of this block grant waiver and should allow for ongoing comparison of TennCare performance and outcomes with performance and outcomes of other state Medicaid programs that maintain the FMAP funding mechanism, both those that continue traditional Medicaid funding and those with expanded Medicaid services and covered populations.

Performance or process measures might, for example, include tracking the percentage of those eligible who are enrolled in TennCare and who maintain the continuity of their coverage; frequency of claim denials and rates of appeals; utilization of preventive care, primary care, specialty care, and mental/behavioral health care including treatment for substance use disorders. *Outcome measures* might include birth outcomes, rates of preventable hospitalizations, attainment of maternity and pediatric care benchmarks, attainment of benchmarks tied to current and future episodes of care payments; and treatment outcomes for health conditions linked to any benefit adjustments or formulary changes made under the block grant funding scheme.

Monitoring of the state's ability to maintain *adequate provider networks* is also essential, especially because Tennessee is a state that relies nearly exclusively on managed care of the populations included in the Amendment. Many providers have expressed concern about returning to a TennCare system in which patients face arbitrary limits on duration and scope of services and bare-bones formularies requiring the initiation of more frequent appeals for medically warranted exceptions. There is also concern whether TennCare would maintain actuarial soundness of its managed care program if released from CMS regulations governing Medicaid managed care arrangements. Failure to do so could result in loss of participation by Managed Care Organizations across the state[7].

- **Failure to address the state's health coverage gap which has resulted in serious problems for individual and public health and is contributing to high rates of uncompensated care and hospital closures in rural areas**

Expanding TennCare eligibility to include uninsured low-income, childless adults is more in keeping with the intent of the Medicaid statute than Amendment 42 and would have a greater positive impact on improving the health of low-income Tennesseans. The federal Medicaid program was designed to help eligible Americans with limited resources obtain health coverage for medically necessary care. The block grant waiver, as submitted, is more narrowly focused on leveraging billions of dollars in federal funding without appropriate accountability to taxpayers for how it is used or for whom. Tennesseans have consistently indicated in statewide polls that they support expansion and resent paying the freight for more generous Medicaid expansion programs in other states. Now Tennesseans are also being asked to tolerate higher financial risks for a potentially less generous program.

Moreover, Amendment 42 fails to address Tennessee's most urgent health issues: (1) rising numbers of low-income residents without health coverage or access to comprehensive health care resulting in catastrophic problems for individual and public health; and (2) ongoing rural hospital closures due in part to high rates of uncompensated care, bad debt, and inadequate government reimbursement and

support. The block grant waiver proposal does not expand TennCare eligibility for *any* uninsured low-income adults, although many of its priority areas for investment could be better addressed by expansion. For example, maternal and infant health outcomes are greatly influenced by pre-pregnancy health status, but poor, single women only become eligible for TennCare after many of the key fetal developmental phases have already occurred. Severe health and mental health consequences related to opioid and other substance use disorders among many young and middle-aged, low-income adults could be addressed in earlier stages of their illness if they had access to diagnosis, treatment and support sooner.

LWV-TN has long supported programs designed to decrease the number of individuals lacking health insurance in Tennessee and to increase access to preventive, primary, and acute health care that is cost-effective for *all* Tennesseans. To that end, our members have been persistent advocates for the expansion of Medicaid to include uninsured, nondisabled adults without dependent children, with income up to 138 percent of the federal poverty level ($17,236 annual income limit in 2019 for one household member in 48 contiguous states including Tennessee and the District of Columbia). The League of Women Voters of Tennessee strongly recommends amending the TennCare waiver to expand eligibility for these uninsured low-income adults.

Expanding TennCare eligibility would:

- Reduce adverse selection and the average per capita cost of TennCare beneficiaries, improving program viability over the long term.
- Reduce the state's uninsured rate and alleviate the burden of uncompensated care which has contributed to more hospital closures in Tennessee than in any other state.
- Improve the health and productivity of approximately 300,000 uninsured Tennesseans who currently delay or forego health care because their incomes are too high for Medicaid but too low to qualify for tax credits to buy marketplace coverage or to afford comprehensive commercial insurance.
- Contribute to the reduction of health care costs in Tennessee over the long term through improvements in individual and public health.
- Significantly increase the federal Medicaid match rate for TennCare enrollees with income up to 138% FPL—from 65.87% in 2019 to 90%. If TennCare eligibility were expanded, the state would be responsible for only 10% of expenditures for the expansion population instead of 35.13%, amounting to a projected influx of an estimated 26 billion dollars in federal payments over the next decade.[4]

➢ **Inappropriate application of the block-grant financing to non-optional Medicaid recipients in apparent conflict with federal law and policy that is likely to trigger prolonged litigation, at high cost to federal and state governments**.

National health care advocacy organizations have made no secret about their intent to legally challenge the block-granting of federal Medicaid aid to states on the grounds that this approach exceeds Medicaid's 1115 waiver authority[9]. CMS's recent decision on November 15 to review and revise

previous CMS guidance for states on block grant waivers also suggests some concern about applying the block grant to non-optional categories of Medicaid eligibility[10]. To avoid costly litigation for both Tennessee and CMS, the LWV-TN respectfully requests that CMS postpone consideration of Amendment 42 at least until the new guidance is issued. Should the new guidance substantially change the terms under which a block grant can be issued, TennCare should be allowed to withdraw this submission and the state of Tennessee should be allowed to reconsider whether to reapply.

In conclusion, the LWV-TN stands ready to assist our state and the TennCare program in developing constructive and innovative ways to improve the health of *all* Tennesseans. We do not believe that Amendment 42 would enable our state to achieve this goal; indeed, it would jeopardize program improvements that have been made or could be made through efforts to expand rather than restrict the TennCare program. We cannot support experimentation with federal financing of services provided to Tennessee's core Medicaid beneficiaries, who are among our state's most vulnerable residents. For the reasons specified in these comments, the League of Women Voters of Tennessee opposes Amendment 42 and strongly urges CMS to reject it.

Submitted on behalf of the League of Women Voters of Tennessee,

Marian Ott, President

References:

1. Division of TennCare,TennCare II Demonstration Project No. 11-W-00151/4 Amendment 42 November 20, 2019. Available at https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tn/tn-tenncare-ii-pa10.pdf

2. Kaiser Family Foundation. Why It Matters: Tennessee's Medicaid Block Grant Waiver Proposal. December 09, 2019. Available at: http://files.kff.org/attachment/Issue-Brief-Why-it-Matters-Tennessees-Medicaid-Block-Grant-Waiver-Proposal

3. The Sycamore Institute. Policy Brief: What's in Tennessee's Medicaid Block Grant Request? November 22, 2019. Available at: https://www.sycamoreinstitutetn.org/tennesseee-medicaid-block-grant-request/

4. Center on Budget and Policy Priorities. Tennessee Block Grant Proposal Threatens Care for Medicaid Beneficiaries. September 25, 2019. Available at https://www.cbpp.org/research/health/tennessee-block-grant-proposal-threatens-care-for-medicaid-beneficiaries

5. The Commonwealth Fund. What a Medicaid Block Grant Would Mean for Tennessee: An Update. September 25, 2019. Available at https://www.commonwealthfund.org/blog/2019/what-medicaid-block-grant-would-mean-tennessee-update

6. MACPAC Issue Brief. Medicaid Hospital Payment: A Comparison across States and to Medicare. April 2017. Available at: https://www.macpac.gov/publication/medicaid-hospital-payment-a- comparison-across-states-and-to-medicare/

7. United Health Foundation. America's Health Rankings. Annual Report 2018. Available at https://www.americashealthrankings.org/explore/annual/measure/Overall/state/TN

8. Health Affairs Blog. Looking Inside Tennessee's Block Grant Proposal. October 4, 2019. Available at: https://www.healthaffairs.org/do/10.1377/hblog20191002.734156/full/

9. Center for Budget and Policy Alternatives. Tennessee Block Grant Proposal Threatens Care for Medicaid Beneficiaries. September 25, 2019. Available at: https://www.cbpp.org/research/health/tennessee-block-grant-proposal-threatens-care-for-medicaid-beneficiaries

10. Kaiser Family Foundation Issue Brief. Why it Matters: Tennessee's Medicaid Block Grant Waiver Proposal. December 9, 2019. Available at: https://www.kff.org/medicaid/issue-brief/why-it-matters-tennessees-medicaid-block-grant-waiver-proposal/