

### **Notice of Change in TennCare II Demonstration: Amendment 35**

The Commissioner of the Tennessee Department of Finance & Administration is providing official notification of intent to file an amendment to the TennCare II Demonstration. This amendment, which will be known as “Amendment 35,” is being filed with the Centers for Medicare & Medicaid Services (CMS). The State intends to request that the proposed amendment become effective immediately upon CMS approval.

#### Description of Amendment and Affected Populations

TennCare is a comprehensive managed care program that provides medical and behavioral health benefits to approximately 1.4 million Tennesseans. In Amendment 35, Tennessee is proposing to amend its benefits package to cover the full continuum of care for individuals with substance use disorder (SUD) treatment needs. Specifically, Tennessee will request 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)<sup>1</sup>.

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. (See Section 1905(a)(29)(B) of the Social Security Act.) 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 has recently issued regulations that place new restrictions on the ability of MCOs to pay for services in IMDs. Specifically, MCOs may only receive a monthly capitation payment on behalf of an individual in an IMD if the individual’s admission is no more than 15 days per calendar month. See 42 CFR § 438.6(e). This new restriction limits 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. 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 TennCare 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.

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<sup>1</sup> 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.

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### 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, 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.

### Hypothesis and Evaluation Parameters

The state will identify or develop appropriate evaluation measures for this demonstration amendment. In developing these measures, it is important to note that TennCare is essentially requesting to maintain coverage of the same continuum of behavioral health care services that it previously offered prior to the new federal restrictions. 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.

### 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.

### Public Notice Process

TennCare has taken a variety of steps to ensure that members of the public are notified of Amendment 35. These measures include the development and maintenance of this webpage, as well as notices published in the newspapers of widest circulation in Tennessee cities with 50,000 or more residents. TennCare has disseminated information about the proposed amendment via its social media accounts (e.g., Facebook, Twitter). TennCare has also notified members of the Tennessee General Assembly of its intent to submit Amendment 35.

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### Public Input Process

TennCare is seeking feedback on Amendment 35 prior to its submission to CMS. Members of the public are invited to offer comments regarding Amendment 35 from April 20, 2018, through May 21, 2018.

Members of the public who wish to comment on the proposed amendment may do so through either of the following options:

- Comments may be sent by email to [public.notice.tenncare@tn.gov](mailto:public.notice.tenncare@tn.gov).
- Comments may be mailed to

Dr. Wendy Long, Director  
Division of TennCare  
310 Great Circle Road  
Nashville, TN 37243.

Individuals who wish to make their comments in person may attend either of the following events:

- 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 those unable to attend in person. Individuals interested in this option must register by contacting Jonathan Reeve—no later than April 26—at (615) 507-6449 or by email at [jonathan.reeve@tn.gov](mailto:jonathan.reeve@tn.gov). Individuals with disabilities or individuals with limited English proficiency who wish to participate in one or both 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](mailto:HCFA.fairtreatment@tn.gov) prior to the date of the hearing.

TennCare always appreciates input. In order to be considered for the final draft of Amendment 35, feedback must be received no later than May 21, 2018. Individuals wishing to view comments submitted by members of the public may submit their requests to the same physical address and/or email address at which comments are being accepted.

### Draft of Amendment 35

A draft of TennCare's proposed demonstration amendment is located at

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<https://www.tn.gov/content/dam/tn/tenncare/documents2/Amendment35.pdf>. Copies of the draft amendment are also available in each county office of the Tennessee Department of Health. Once comments received during the public input period have been reviewed and considered, a final draft of the amendment will be prepared. The final draft will be submitted to CMS and will then be made available through this webpage.

#### TennCare Page on CMS Web Site

As the federal agency with oversight authority over all Medicaid programs, CMS offers its own online resources regarding the TennCare Demonstration. Interested parties may view these materials at [https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers\\_faceted.html](https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers_faceted.html).