

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

A.M.C., by her next friend, C.D.C., *et al.*,

Plaintiffs,

v.

STEPHEN SMITH, in his official capacity as
Deputy Commissioner of Finance and
Administration and Director of the Division
of TennCare,

Defendant.

Civil Action No. 3:20-cv-00240
Chief District Judge Crenshaw
Magistrate Judge Newbern

NOTICE OF FILING

Defendant respectfully submits this notification to the Court to inform the Court of two upcoming changes to TennCare’s policy on providing continued coverage to certain individuals during the national COVID pandemic.

Specifically, since submitting Director Kimberly Hagan’s April 13, 2020 and May 29, 2020 Declarations describing the State’s moratorium on disenrollments from the TennCare and CoverKids programs, *see* Hagan Decl. ¶ 4, Doc. 29-2 (Apr. 13, 2020) and Hagan Decl. ¶ 41, Doc. 63 (May 29, 2020), TennCare has determined that it has been incorrectly extending coverage to two categories of individuals contrary to guidance from the Centers for Medicare & Medicaid Services (“CMS”) and intends to cease extending coverage to such individuals starting February 1, 2021.

First, TennCare has been incorrectly providing continued Medicaid coverage to individuals who are receiving benefits due to a temporary presumptive eligibility finding but who have either never been determined to actually be eligible for Medicaid because they have never completed the

Medicaid application process or have in fact been found ineligible for Medicaid following the processing of a completed application. An example would be an individual who received temporary presumptive coverage through TennCare's hospital presumptive eligibility program but never completed the required Medicaid application process by submitting additional requested information so that a final eligibility determination can be made or who completed that process and was found ineligible for Medicaid. Prior to the enactment of the State's moratorium on disenrollments from TennCare, individuals with presumptive eligibility who failed to respond to a request for additional information, after the deadline to respond had passed, would receive a denial notice with appeal rights informing them they were not found eligible for TennCare because they failed to respond to TennCare's requests for additional information. Likewise, individuals who completed the application process but were found ineligible for TennCare would be sent a denial notice with appeal rights. After the moratorium went into effect, TennCare put in place two different work arounds to provide continued presumptive eligibility: 1) TennCare began extending the due date by which presumptively eligible individuals had to submit the requested additional information as a way to extend their presumptive Medicaid coverage when they failed to complete the Medicaid application process and 2) TennCare began running a daily "fix" that reinstated presumptive coverage for anyone with presumptive coverage who did complete the application process but whose application was denied. TennCare has now concluded that its policy of extending presumptive coverage is incorrect and inconsistent with CMS's expectations.

CMS has made clear that individuals with presumptive coverage who have not received a determination of eligibility under the state plan are not "enrolled" in Medicaid and, therefore, not subject to the requirements for continuous coverage under the Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (Mar. 18, 2020). *See* COVID-19 Frequently

Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies (last updated January 6, 2021) at 45 available at <https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>; *see also* 42 C.F.R. §433.400(b). Thus, starting February 1, 2021, TennCare plans to stop extending the due date for such individuals to submit requested additional information to complete their Medicaid application, to stop reinstating presumptive coverage when a Medicaid application has been denied, and to begin issuing denial notices with appeal rights as TennCare did prior to the moratorium.

Second, TennCare has also been incorrectly extending CoverKids coverage to noncitizens who were receiving coverage during their pregnancies, but whose pregnancies have ended, even though such individuals do not otherwise qualify for Medicaid or CoverKids. *See* Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136 Frequently Asked Questions (FAQs), at 10 (Apr. 13, 2020), <https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf>. Starting February 1, 2020, TennCare will also cease extending coverage to this group of individuals as well. However, unlike individuals with presumptive eligibility who have never been found eligible for Medicaid, this category of individuals had been found eligible for CoverKids coverage. Therefore, instead of a denial notice with appeal rights, they will first be issued a Preterm Notice seeking information to determine if they might be eligible in any other category of CoverKids or TennCare. After that step is completed, such individuals will either be found eligible in another category or be issued a termination notice with appeal rights.

In either case, whether individuals with presumptive eligibility or post-partum noncitizens with CoverKids coverage, both are outside the scope of the pending motions, and these changes to TennCare's policy do not impact those pending motions in any way. Individuals with presumptive

coverage who have failed to complete the TennCare application process, or were found not eligible as part of the application process, do not fall within Plaintiffs' proposed class definition as they do not meet the eligibility criteria for TennCare coverage and they have not been and are not being disenrolled from TennCare. *See* Pls' Mot. For Class Certification at 1, Doc. 5 (Mar. 20, 2020) (defining proposed class as "[a]ll individuals who meet the eligibility criteria for TennCare coverage and who, since March 19, 2019, have been or will be disenrolled from TennCare."). By Plaintiffs' own admission, individuals enrolled in CoverKids are not part of the proposed class. *See* Reply in Supp. of Pls.' Mot. for Prelim. Inj. at 4, Doc. 71 (June 5, 2020).

January 15, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via the Court's electronic filing system on this 15th day of January, 2021.

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