TennCare Quarterly Report

Submitted to the TennCare Oversight Committee and the Fiscal Review Committee

January 15, 2005

Status of TennCare Reforms and Improvements

Governor's Reform Efforts

Acknowledging that the proposed reform effort of September 2004 could not proceed without modification of the Consent Decrees, Governor Bredesen on November 10, 2004, announced that he was setting in motion a process to end TennCare and return to a traditional Medicaid program. The Tennessee Justice Center (TJC) requested an additional seven days to reconsider modifications, and the Governor agreed. TJC filed four motions with the federal court in mid-November to suspend the Consent Decrees for two years if TennCare would refrain from disenrolling persons in the waiver population. The motions contained open-ended language about re-opening lawsuits, however, which the state found unacceptable.

Governor Bredesen and TJC head Gordon Bonnyman then met on several occasions to attempt to resolve differences. These efforts were not successful, leaving the Governor at the end of the quarter still considering options about what could be done.

Source of information for this section: Carol Wilson, Assistant Director of Policy, Bureau of TennCare.

Renewal Status

The annual eligibility "renewal" process which began in January 2004 continued with the following results:

- Individual notices sent, January through December 2004:
  194,752 individuals (159,446 cases)

- 30-day notices sent, February through December 2004:
  146,677 individuals (118,744 cases)

- 70-day notices sent, April through December 2004:
  73,288 individuals (58,107 cases)

- Number terms as of December 2004 for no response after 90 days:

32,466 individuals (26,462 cases)

Sources of information for this section: Ken Barker, Director of Information Services, Bureau of TennCare.

Status of Filling Top Leadership Positions in the Bureau

Two key leadership positions were filled during this quarter.

Dr. Wendy Long was named Chief Medical Officer, replacing Dr. David Hollis. Formerly Assistant Commissioner of the Tennessee Department of Health, Dr. Long has worked in state government since 1988, filling a variety of positions during that time. She has served previously as Chief Medical Officer of TennCare, and in 1998 served as Acting Director of TennCare. She has received national awards for her contributions to public health, including her creation of the HIV/AIDS Centers of Excellence in Tennessee.

Dr. Winnie Toler was named Director of Managed Care, replacing Darin Gordon, who now serves as Chief Financial Officer. Dr. Toler has more than 20 years of health care management experience and has served in upper management positions for a variety of managed care groups including Kaiser Permanente Medical Care Program, Universal Care of Tennessee, Columbia/HCA, Meharry Medical Services Foundation, and the State of Michigan's Office of Children and Youth Services.

Number of Recipients on TennCare and Costs to the State

As of the end of the quarter, there were 1,336,691 enrollees on TennCare: 1,094,015 Medicaid eligibles and 242,676 Uninsureds and Uninsurables.

During the fourth quarter of 2004 (October through December), TennCare spent $1,265,861,921.86 for managed care services. These expenditures included: payments to the managed care organizations (MCOs), payments to the behavioral health organizations (BHOs), payments to the dental benefits manager (DBM), and payments to the pharmacy benefits manager (PBM).

Source of information for this section: Carolyn Johnson, TennCare Fiscal.

Viability Of MCOs in the TennCare Program

Claims Payment Analysis

The prompt pay requirements of T.C.A. § 56-32-226(b) mandate that each health maintenance organization and behavioral health organization ensure that 90% of clean claims for payment for services delivered to a TennCare enrollee are paid within 30 calendar days of the receipt of such claims and 99.5% of all provider claims are processed within 60 calendar days of receipt. TennCare's contract with its Dental Benefit Manager requires that the DBM also process claims in accordance with this statutory standard.

TennCare's contract with its Pharmacy Benefits Manager (PBM) requires that the PBM must pay 95% of all clean claims within 20 calendar days of receipt and the remaining 5% of clean claims within 10 calendar days.

The Tennessee Department of Commerce and Insurance (TDCI) requested data files of all TennCare processed claims from TennCare MCOs, BHOs, the DBM and the PBM for the month of October 2004. TDCI also requested data files of pended TennCare claims as of October 31, 2004, and a paid claims triangle from October 1, 2003, through October 31, 2004 (except that the PBM's triangle report was only for the period January 1, 2004 through October 31, 2004 because its contract with TennCare began on January 1, 2004).

Volunteer State Health Plan (VSHP) was not in compliance with the prompt pay requirements for the month of October. VSHP has two separate contracts with TennCare: BlueCare and TennCare Select. VSHP processed only 98.04% of all BlueCare claims and only 98.11% of all TennCare Select claims within 60 calendar days of receipt. (As stated above, VSHP is required to process 99.5% of all provider claims within 60 calendar days of receipt.) Because VSHP did not comply with the prompt pay requirements in October, VSHP was required to submit November 2004 claims data for testing. VSHP was in compliance with the prompt pay requirements for processing BlueCare and TennCare Select claims in the month of November, thus no additional action was required.

Except for VSHP, all other TennCare MCOs, the TennCare BHOs, the DBM and the PBM were in compliance with prompt pay requirements for the month of October 2004.

As part of TDCI's cycle of analyzing claims data for the first month in each quarter, the division will review claims data for all TennCare MCOs, BHOs, the DBM and the PBM for January 2005.

Net Worth Requirement

Listed below is each MCO's and BHO's net worth requirement compared to net worth reported at September 30, 2004, on the NAIC second quarter financial statements filed on December 1, 2004. TDCI has not adjusted the net worth reported on the NAIC quarterly statements. TDCI's calculations for the net worth requirement reflect payments made for the calendar year ending December 31, 2003, including payments made under the "stabilization plan."

	Net Worth Requirement	Reported Net Worth	Excess/ (Deficiency)
Better Health Plan (A)	2,956,800	4,211,880	1,255,080
John Deere	15,745,967	88,043,599	72,297,632
Memphis Managed Care	9,699,983	18,709,747	9,009,764
OmniCare Health Plan	7,087,846	11,127,719	4,039,873
Preferred Health Partnership	7,694,827	23,914,531	16,219,704
Victory Health Plan	2,068,212	4,539,897	2,471,685

Volunteer (BlueCare & Select)	22,214,872	30,807,435	8,592,563
Premier Behavioral Systems	7,960,810	11,442,813	3,482,003
Tennessee Behavioral Health (B)	6,357,326	8,173,472	1,816,146

Note:

(A) BHP's net worth requirement is the "enhanced" net worth requirement determined during the Request for Response (RFR) process. The net worth requirement has been increased above the statutory minimum based on projected premium revenue. BHP's calculated statutory net worth requirement is $2,636,528. Because BHP's statutory net worth requirement is less than the enhanced net worth requirement, TDCI will enforce the requirement at the higher level.

(B) TBH's statutory net worth requirement is $4,792,323. Effective, July 1, 2004, the new "TBH East" contract required TBH to establish an enhanced net worth of $6,357,326.

Financial Issues

Xantus Healthplan of Tennessee, Inc. (Xantus)

Effective July 31, 2003, the TennCare Bureau terminated its contract with Xantus. On June 2, 2003, TDCI filed a petition to liquidate Xantus with the Davidson County Chancery Court. The court heard this petition on January 8, 2004. Chancellor Carol L. McCoy granted the order converting the rehabilitation to liquidation on January 21, 2004, and Chris Burton was appointed as the Special Deputy for the liquidation. Amendment 4 to the Contractor Risk Agreement provided for the TennCare Bureau to continue funding claims with dates of service of April 1, 1999 through July 31, 2003 (the "run-out claims") and the reasonable and necessary administrative costs for processing these claims after July 31, 2003. During the period August 1, 2003 through December 31, 2004, Xantus paid approximately $27.5 million for run-out claims.

Mr. Burton is currently in the process of securing the remaining assets of Xantus and developing procedures for the distribution of assets. The deadline for the submission of Proofs of Claim against Xantus was May 14, 2004.

Tennessee Coordinated Care Network d/b/a Access MedPlus (TCCN)

Because TCCN was unable to cure statutory and contractual financial and claims processing deficiencies, the state terminated its contract on October 31, 2001.

On October 18, 2001, the Chancery Court of Davidson County issued an Order of Seizure of TCCN by TDCI to take possession and control of all of the property, books, documents, assets and the premises of TCCN. The Order also set a hearing on TDCI's request for liquidation or rehabilitation of TCCN to be held on November 2, 2001. On October 20, 2001, the TennCare Bureau moved TCCN's TennCare enrollees to the TennCare Select plan.

On November 2, 2001, the Chancery Court of Davidson County entered a Liquidation Order for TCCN. The order established that all claims must be received by March 1,

2002, at 4:30 p.m., CST. Courtney Pearre, Esq., appointed Supervisor since May 10, 2001, was named the Commissioner's Special Deputy for the purposes of liquidation.

Before liquidation, the management company, Medical Care Management Company ("MCMC"), a wholly-owned subsidiary of Access Health Systems ("Access"), transferred approximately $5.7 million from the assets of TCCN to the accounts of the MCMC. The Chancery Court issued an order granting injunctive relief restraining the management company from removing any of the $5.7 million. Access subsequently filed bankruptcy. Recently, the Bankruptcy Court entered an order that allows the Special Deputy Liquidator to proceed to recover the $5.7 million in Chancery Court. Such a petition was filed in Chancery Court. The Creditors Committee for the bankruptcy estate filed a motion to modify the Bankruptcy Court's order. The Special Deputy Liquidator filed papers in opposition to the Creditors Committee's motion.

Chancellor Lyle found for the liquidation that the $5.7 million had been wrongfully transferred from TCCN accounts and that such action created a constructive trust for the funds while in the hands of Access. Chancellor Lyle ordered the $5.7 million returned to TCCN accounts. Various creditors of Access and the bankruptcy estate are seeking an appeal of Chancellor Lyle's ruling in the Tennessee Court of Appeals. Briefs were submitted to the Court at the end of January 2004.

With the resolution of these issues, the Special Deputy Liquidator will petition for a distribution of the remaining assets of TCCN. As of June 21, 2004, disbursements of $39,568,193 have been made against a total debt of $76,095,315, or 52 cents of every dollar owed to providers.

Universal Care of Tennessee (Universal)

On September 13, 2002, Universal was placed under the Administrative Supervision of the Commissioner of Commerce and Insurance as a result of the company's financial and claims processing operations problems. On December 31, 2002, Universal was again placed under an Agreed Order of Supervision through June 30, 2003.

At March 31, 2003, Universal reported net worth of $6,451,709, a deficiency of $1,216,126 below the statutory net worth requirement. Universal's reported net worth included a $54,436,971 receivable from the TennCare Program, which the state disputes. As a result, this receivable was not included in the calculation of net worth. Universal's adjusted statutory net worth at March 31, 2003, was ($47,985,262), a statutory net worth deficiency of $55,653,097 below the net worth requirement.

On April 2, 2003, the TennCare Bureau notified Universal of its intent to terminate the contractor risk agreement effective June 1, 2003. Universal filed in the United States District Court for the Middle Tennessee District an application for a preliminary injunction to stop the cancellation of the contractor risk agreement. On May 30, 2003, Judge Nixon denied Universal's application for a preliminary injunction.

Also on May 30, 2003, Universal filed with the Tennessee Claims Commission a claim of $75,000,000 against M. D. Goetz as Commissioner of the Tennessee Department of Finance and Administration and Manny Martins, then-Deputy Commissioner of the Tennessee Department of Finance and Administration, Bureau of TennCare.

TDCI filed a petition to liquidate Universal with the Davidson County Chancery Court on June 5, 2003. Chancellor McCoy granted the petition and the signed order was received July 2, 2003. Between June 1, 2003, and the liquidation order date of July 2, 2003, Universal continued to process and pay claims for dates of service April 12, 2002, through May 31, 2003.

Mr. Paul Eggers was appointed the Special Deputy Liquidator. Mr. Eggers is currently in the process of securing the remaining assets of Universal and developing procedures for the distribution of assets. The deadline for the submission of Proofs of Claim against UCOT was June 15, 2004.

CMS approved a contract between TennCare and Universal Care of Tennessee in Liquidation for TennCare to pay the HMO in liquidation for processing Universal claims with dates of service on and after April 12, 2002. Universal Care of Tennessee in Liquidation has contracted with the company's former vendor for use of the claims processing software. A separate vendor has been contracted to process claims received for both dates of service before and after April 12, 2002. As of December 31, 2004 approximately $7.1 million has been paid for claims with dates of service on and after April 12, 2002.

Source of information for this section: Lisa Jordan, Assistant Commissioner, Tennessee Department of Commerce and Insurance.

Success of Fraud Detection and Prevention

1. The Office of Inspector General moved to a new location in Metro Center during the month of October. This allowed considerably more work space for new staff hired during this quarter.

2. The OIG staff continues to work cases referred by MCC's, local law enforcement, TBI, FBI, Health Related Boards, other state agencies, and the general public via the Web site, faxes, letters, and phone calls to the hotline. Results are listed below:

Summary of Enrollee Cases

	Quarter	YTD
Cases closed	4556	9560
Recommended	1646	3712
terminations TPL added	82	230
Income adjusted	4	43

Summary Relating to Provider Cases

	Quarter	YTD
Cases closed	29	70
Cases referred to TBI*	2	4
Cases referred to HRBs*	1	4

The Tennessee Bureau of Investigation (TBI) MFCU (Medicaid Fraud Control Unit) and the Health Related Boards (HRBs) take the lead in cases once they are referred to them. The OIG continues to assist as requested.

3. The OIG staff continues to reach out to the District Attorneys and local law enforcement agencies across the state to solicit their help and support in prosecuting recipients who commit fraud against the TennCare Program. Details as follows:

	Quarter	YTD
Cases Referred	117	144
Grand Jury Indictments	22	45

- Currently working with law enforcement on ninety-four (94) open cases.

4. The OIG staff provided presentations for the following organizations/contacts during this quarter:
   a. Healthcare Financial Management Association
   b. District Attorneys Conference - two meetings
   c. Fiscal Review Committee
   d. 8Th Judicial District, DA's and Local law enforcement
   e. Sheriff and staff, Dekalb County - two meetings
   f. Department of Human Services- Information Line staff
   g. TennCare Solutions Unit
   h. TennCare Managed Care Contractors
   i. Department of Revenue Investigations
   j. American Legion Post 5
   k. Finance & Administration Management Team
   l. Fentress County Sheriff's Office & Assistant District Attorney

5. The OIG staff continues to work with the state's contractor, EDS, to develop the fraud and abuse detection software system. The new TennCare Management Information System (TCMIS) will allow the OIG to initiate proactive measures for identifying fraud and abuse within the TennCare system. The Program Integrity Division of the OIG will be able to identify outliers for both providers and recipients. The ability to create ad hoc reports will greatly improve the speed and efficiencies of the investigations. Targeted queries will be generated on a routine basis; these queries have been developed to identify potential fraudulent claims submission. The goal behind these reports and queries is to promote improved work efficiencies, terminate individuals who are no longer eligible for TennCare benefits and prosecute individuals who have violated federal and/or state laws.

   As a result of these reports, OIG has sent three different letters during this quarter pertaining to potential fraud by enrollees. Letters were sent to various enrollees in an effort to review the following areas: income that was under reported to the Bureau of TennCare, based on employer wages reported to the Department of Labor and Workforce Development, Employment Security Division; distant pharmacy (purchasing prescriptions from a pharmacy more than 100 miles from their residence); and, a letter pertaining to narcotics exceptions

(being seen by 4 providers or 3 different pharmacies in a 30 day period). Letters were also sent to providers regarding possible excessive billing indicators.

There were a total of 12,535 letters mailed to enrollees. The OIG staff continues the review process on each of these cases.

6. The newly created Legal and Criminal Investigation Divisions of OIG has been busy hiring staff during this quarter. The Legal Division is headed by a Deputy Inspector General and currently has two staff attorneys, a paralegal and an administrative assistant. The Criminal Investigation Division is also headed by a Deputy Inspector General and has ten criminal investigators and an administrative assistant.

7. The Criminal Investigation Division has purchased the equipment required for their investigative work state wide.

8. The Legal Division has assisted the other divisions within the OIG by providing legal advice on numerous issues, including how to meet the requirements of various statutes, drafting and reviewing documents that have legal implications. They have also assisted with the legal training of the criminal investigators.

9. An outline of TennCare fraud laws and related offenses, was developed by the Legal Division. This outline has been distributed to the District Attorneys Conference Executive Committee.

10. An application has been submitted by the Criminal Investigation Division for membership of the Regional Organized Crime Information Center (ROCIC), with the Tennessee Bureau of Investigation (TBI) as the sponsoring agency. Application has also been submitted to the TBI's Crime Statistics Unit for the OIG to submit data to the Tennessee Incident Based Reporting System (TIBRS).

11. Steps have been taken to purchase software for the Criminal Investigation Division to access the National Crime Information Center (NCIC).

12. The Criminal Investigation Division is developing policies and procedures. The goal is to have this completed for review by the Commission on Accreditation for Law Enforcement Agencies (CALEA), for accreditation.

13. Plans for next quarter:
    a. Continue to network with and exchange information with other state, federal and local government agencies.
    b. Provide training and assistance to the MCC staff that have the responsibility to focus on fraud and abuse violations.
    c. Improve and expand our collaboration efforts with federal agencies, i.e. Medicare Public Safeguard Contractors, TRICARE, SSI-OIG and DHHS-OIG.
    d. Obtain CMS certification of the new management information system.
    e. Work with Medstat to improve data quality and add new reports that will assist in the data mining and data analysis.
    f. Complete the hiring process to fully staff the OIG.

g. Initiate civil suits to recover TennCare money where demand letters have failed to obtain an appropriate response.
h. Increase the number of cases indicted, number of civil cases filed, number of court appearances as investigations progress.
i. Continue to review computer generated reports and the aggressive enrollee letter process.
j. Provide presentations and training interested parties regarding TennCare fraud and the role of the OIG.
k. Continue staff training and develop best practices for our teams.

Source of information: Deborah Faulkner, TennCare Inspector General