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Opinion No. 02-108

TennCare Open Enrollment for the Medically Eligible

QUESTION

Is the State currently required to hold an open enrollment period for new applicants for the TennCare program under the new "medically eligible" category?

OPINION

No. Currently, the General Assembly has funded a TennCare program in which new enrollment in TennCare Standard is limited to persons who are determined to meet criteria as medically eligible and whose incomes are below 100% of the federal poverty level. That current status of the program, in which there is no provision for an open enrollment period for medically eligible individuals without regard to income level, is consistent with the program design of the new TennCare waiver.

ANALYSIS

The new TennCare demonstration waiver that took effect on July 1, 2002, pursuant to the approval of the Centers for Medicare and Medicaid Services (CMS), replaced the program that had been in place since January 1, 1994, and made significant changes in the structure and scope of TennCare.

Under the program design of the new TennCare waiver approved by CMS, there are two distinct parts: TennCare Medicaid and TennCare Standard. TennCare Medicaid covers those individuals who meet the requirements for Medicaid eligibility as set forth in the approved Medicaid State plan. These eligibility standards are unchanged from those in effect under the prior waiver. Continuous enrollment is still available for individuals eligible for TennCare Medicaid; that is, individuals determined eligible for TennCare Medicaid may enroll at any time during the year.

TennCare Standard (a new aspect of the program) has two components. The first corresponds roughly with the former "uninsured" category. To qualify under this component, an individual must be ineligible for Medicaid, be uninsured and lack access to insurance, and have income that does not

exceed specified levels to be set annually by the Legislature, which may differ between children and adults but which cannot exceed 200% of the federal poverty level.[1] A new applicant whose income falls within the poverty levels established by the General Assembly may qualify for TennCare Standard as a qualified uninsured person only during a time designated as a period of open enrollment.

The second component of TennCare Standard is the medically eligible component, which roughly corresponds to the former "uninsurable" category. During a designated period of open enrollment, a new applicant, if found ineligible for Medicaid and ineligible for TennCare Standard as a qualified uninsured person solely because of having excess income, may qualify for TennCare Standard as medically eligible, if additional criteria are met, without regard to income level. However, at a time when enrollment is not open a new applicant can be enrolled in TennCare Standard as medically eligible only if his or her income is below 100% of the federal poverty level.[2] Under the previous waiver, individuals determined to be eligible for TennCare as uninsurable could enroll at any time during the year and without regard to their income level. The new TennCare waiver, as submitted to and approved by CMS, changed this aspect of the program design.

In its submission to CMS, the state set out a design for a new TennCare program that reflected the state's desire to "maintain flexibility in its enrollment practices [for new demonstration eligibles who are not currently enrolled in TennCare] to insure that individuals are added to the program only when sufficient funds have been appropriated by the General Assembly and there is availability of funds under the federal budget neutrality cap." (TennCare Program Design and Waiver Modifications, Final Draft - January 7, 2002, p. 10; TennCare Program Design and Waiver Modifications, submitted to CMS February 12, 2002, p. 10). That desired flexibility was specifically expressed in terms of time of enrollment and income levels.

With respect to enrollment periods, the new program design of the TennCare waiver, as proposed by the state and approved by CMS, makes explicit that "*all new applicants for TennCare Standard must apply for eligibility during a designated open enrollment period,*" subject only to the state's "option of offering continuous enrollment to medically eligible individuals [but only] with

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[1]The state had proposed to cover the non-Medicaid (demonstration) population up to 250% of the federal poverty level, but CMS expressly limited its approval, for purposes of federal financial participation, to state expenditures for individuals who are uninsured with income at or below 200% of the federal poverty level. The "medically eligible" population is exempt from this income limitation, during open enrollment periods.

[2]Currently, only two eligibility groups may enroll as new applicants: persons determined eligible for Medicaid and persons with incomes below 100% of poverty who are determined to be "medically eligible." Continuous enrollment is available for these two groups; that is, individuals determined eligible may enroll at any time during the year.

incomes no greater than poverty." *Id.* at 19 (emphasis added).[3] The waiver, both as submitted and approved, provides that the state "*anticipate[s]* holding up to two fixed enrollment periods per year for demonstration eligibles", that is, for persons eligible for TennCare Standard as uninsured within specified income limits or as medically eligible without regard to income. *Id.* at 10 (emphasis added). However, "[t]hese open enrollment periods [are] *subject to appropriations from the General Assembly . . . .*" *Id.* at 27 (emphasis added). Attachment E to the state's submission to CMS, titled "Proposed Timeline," reiterates the provisional nature of the state's projections regarding open enrollment periods. It proposes, for example, that an open enrollment period for potential new eligibles be conducted in the fall of 2002, but expressly "subject to legislative appropriation." *Id* .at 41.[4]

Therefore, while open enrollment periods for non-Medicaid eligibles are anticipated in the design of the new TennCare Standard program, such open enrollment periods are subject to, and dependent on, appropriations by the General Assembly for that purpose. The new waiver, as proposed by the state to CMS and as approved, does not contemplate automatic open enrollment periods, without specific legislative action, whether for medically eligible individuals without regard to income or for uninsured individuals with incomes that do not exceed specified levels. While the TennCare program continues to include medically eligible (formerly "uninsurable") individuals at any income level as an eligibility group,[5] their enrollment in the program is now limited to periods of open enrollment, as funded by specific legislative appropriations, if their incomes exceed 100% of the federal poverty level.

We are aware of no action taken by the General Assembly during the last legislative session that would have resulted in a period of open enrollment. It is our understanding that the Governor's recommended budget did include an improvement for an open enrollment period. That open enrollment improvement funding was in the appropriations bill as introduced. However, the Appropriations Act, Public Chapter 842, removed the funding for that purpose. The Act, at Section 10, Item 109, provides: "The appropriation made to the department of finance and administration, TennCare program, by the provisions of this act is reduced by the sum of $10,000,000. Such funding reduction is for the purpose of eliminating the improvement for open enrollment." We are aware of no other general fund appropriation being made for the purpose of conducting an open enrollment period. The General Assembly's enactment of a funding reduction for the express purpose of

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[3]By letter of May 29, 2002, the state notified CMS of its present intention to offer continuous enrollment to medically eligible individuals with incomes below the poverty level.

[4]With respect to income levels, the new TennCare program design calls for the General Assembly to determine annually the income criteria for eligibility for TennCare Standard, through the appropriation process, to assure that coverage conforms to the level of state resources available to operate the program. *Id.* at 9, 10, 16.

[5]This is in contrast to individuals who qualify under the "uninsured" component of TennCare Standard, whose eligibility is subject to income limits set by the Legislature.

eliminating the improvement for an open enrollment period has resulted in the current period known as "continuous enrollment," during which the only non-Medicaid group that may enroll as new applicants are persons determined to be medically eligible with incomes below 100% of the federal poverty level.

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