September 17, 2004

Honorable Phil Bredesen, Governor
First Floor, State Capitol
Nashville, TN  37219

RE: TennCare Reform Proposal

Dear Governor Bredesen:

We write to you to express our deep concern regarding pending proposals to modify the TennCare program in ways that can be expected to have serious adverse effects on African-Americans. We fear that those effects will not only be felt in Tennessee, but will cause harm to minority Americans across the country.

As you know, new state legislation took effect July 1 that redefined “medical necessity” for purposes of determining what medical services will be available to TennCare enrollees. This definition, which is in Section 22 of Chapter 673, Tennessee Public Acts of 2004, prohibits coverage for a prescribed service if there is anything else that would be cheaper. The cheaper alternative is not required to be either effective or safe, and it does not have to be supported by medical evidence or the opinion of the treating physician. The TennCare Bureau or its managed care contractor has the sole discretion to decide whether a service is covered, without regard to professional standards of medical care that apply to the community at large. The definition specifically says that the state agency can determine that behavioral change, observation or “no service at all” may be substituted for the treatment ordered by the treating physician.

The definition of medical necessity sets a standard that is without precedent anywhere in the nation. As the Kaiser Commission on Medicaid and the Uninsured has pointed out, the definition establishes a second-class standard of medical care for Medicaid beneficiaries and deprives them of the federally protected entitlement to necessary treatment. (See the Commission’s Policy Brief entitled “Tennessee’s New ‘Medically Necessary’ Standard: Uncovering the Insured?” (July 2004), available at http://www.kff.org/medicaid/loader.cfm?url=/commonspot/security/getfile.cfm&PageID =44707.)

Other aspects of the pending TennCare reforms reflect the ill-conceived policies embodied in the definition of medical necessity. For example, the proposal would cover only the cheapest drug in most instances, regardless of its safety or efficacy. TennCare would also increase patient cost-sharing requirements beyond those permitted by federal law, and would impose arbitrary limits on medically necessary services. These proposals all create insurmountable barriers to care for a patient population that is already severely disadvantaged.

We are deeply concerned that African-Americans are disproportionately affected by this enactment of a lower standard of medical care. Forty percent of Tennessee’s
African-Americans are enrolled in TennCare, and nearly half of all African-American children in the state rely on TennCare for their health coverage. In addition, African-American health care providers provide a disproportionately large share of the medical services provided to TennCare patients, and the new definition places them in an untenable position. By permitting them to provide their patients only the cheapest care, regardless of its safety or efficacy, the new definition prevents these health care providers from treating their patients in the manner that professional ethics and medical malpractice standards require.

The cumulative impact of these proposals falls most heavily on the sickest TennCare enrollees, who are also the program’s most vulnerable beneficiaries. As you know, the burden of chronic illness and poor health status falls most heavily upon minority Americans, and therefore the proposed “reforms” will be felt most severely by African-Americans and other minority Tennesseans. For example, African-American children are four times more likely to die of asthma than white children and youth. (See Tennessee Department of Health, “Facts about Asthma in Tennessee Youth”, available at http://hitspot.state.tn.us/hitspot/hit/main/reports/brochures/asthma.pdf.) The proposals, although undoubtedly well-intentioned, will worsen, rather than improve Tennessee’s serious racial disparities in health care and health status.

If Tennessee moves forward to implement these reforms, it will set a precedent that will undoubtedly influence other states across the country, to the disadvantage of minority Americans everywhere. For this reason, we respectfully urge you to do all that you can to revise the TennCare reform plans to eliminate these dangerous, discriminatory and morally troubling effects.

Thank you for your consideration.

Respectfully submitted,

Ruth T. Perot, Executive Director
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Out of Many, One

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