

September 23, 2020

To: The Honorable Alex M. Azar, Secretary, Department of Health and Human Services
The Honorable Steven Mnuchin, Secretary, Department of the Treasury
The Honorable Seema Verma, Administrator, Centers for Medicare & Medicaid Services

Submitted by email to: StateInnovationWaivers@cms.hhs.gov

Subject: Georgia Section 1332 Waiver Comments

Dear Secretary Azar, Secretary Mnuchin, and Administrator Verma,

The Center for Public Representation (CPR) and the Georgia Council on Developmental Disabilities (GCDD) write to express our serious concerns about Georgia's proposed 1332 waiver, particularly its impact on Georgians with disabilities. CPR is a national legal advocacy organization that promotes the full integration and community participation of people with disabilities. GCDD is Georgia's state developmental disabilities council, which works to promote public policy that advances the community integration of Georgians with developmental disabilities.

We are deeply concerned by Georgia's proposed waiver, which would allow it to change how many Georgians purchase health insurance. If approved, Georgia would be able to stop using the federal marketplace to enroll Georgians in health insurance without replacing it with a state-based marketplace. Instead, the approximately 500,000 Georgians who enroll in private health plans or Medicaid through HealthCare.gov would enroll in health insurance through insurers themselves or web brokers, which is likely to lead to confusion and coverage losses.

Georgia's application frames the waiver as a solution for the state's high uninsured rate. But Georgia's proposal could actually cause tens of thousands of Georgians to fall through the cracks and lose coverage altogether, while other people would likely end up in plans that impose high costs if they get sick, plans which are also allowed to refuse coverage to people with disabilities and others with preexisting conditions.¹ We urge you to reject the proposal.

¹ Tara Straw, *Tens of Thousands Could Lose Coverage Under Georgia's 1332 Proposal*, Ctr. on Budget & Policy Priorities (Sept. 1, 2020), <https://www.cbpp.org/research/health/tens-of-thousands-could-lose-coverage-under-georgias-1332-waiver-proposal>.

Georgia’s proposal will insure fewer people and encourage enrollment in non-ACA compliant plans that discriminate against people with disabilities.

Georgia’s waiver would change where and how consumers purchase health coverage. In 2020, the vast majority (79 percent) of Georgia marketplace enrollees used HealthCare.gov to sign up for coverage, even though they already had the option to use a private broker or insurer website. Georgia’s waiver would eliminate the one-stop shop of HealthCare.gov, *requiring* people in the state to use private insurance companies and brokers to compare plans, apply for financial assistance, and enroll in coverage. This would undoubtedly increase confusion about where and how to access good-quality health coverage, hindering enrollment and prompting many people to give up and become uninsured. Contrary to the promise of expanded choices, this waiver would rob consumers of their only option for a guaranteed, central source of unbiased information on the comprehensive coverage available to them.

Moreover, private brokers and insurers who operate through HealthCare.gov have a track record of failing to alert consumers of Medicaid eligibility and picking and choosing the plans they offer, often based on the size of plan commissions.² Indeed, in the system Georgia is proposing, people who are eligible for Medicaid could have a much harder time finding help with enrollment because Medicaid generally doesn’t pay commissions and agents and brokers have no incentive to fill the gap left for this population that would result from eliminating HealthCare.gov. Georgia’s waiver also proposes that substandard plans, such as short-term limited duration plans, would be presented alongside comprehensive insurance.³ Even now, brokers sometimes steer people into such plans, which often come with higher commissions, a tactic that has continued during the pandemic.⁴

These less comprehensive plans are allowed to discriminate against people with disabilities and others with preexisting conditions by denying them coverage, charging higher premiums, or selling them coverage that does not cover treatment of preexisting conditions. They are also not required to cover essential health benefits (EHBs), including mental health services, substance use disorder treatment, and prescription drug coverage, that are critical for many people with disabilities. People will thus be exposed to potentially facing high out-of-pocket

² Tara Straw, “Direct Enrollment” in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm, Ctr. on Budget & Policy Priorities (Mar. 15, 2019), <https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>.

³ State of Georgia, *Georgia Section 1332 State Empowerment and Relief Waiver Application* 23 (July 31, 2020) (hereinafter Georgia Application).

⁴ Christen Linke Young & Kathleen Hannick, *Misleading marketing of short-term health plans amid COVID-19*, Brookings Inst. (Mar. 24, 2020), <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/03/24/misleading-marketing-of-short-term-health-plans-amid-covid-19>.

costs and benefit limitations that threaten their health and financial stability, which is particularly dangerous now, as we face a public health crisis from COVID-19.

A study of short-term plans in Atlanta earlier this year showed that even though people would pay lower premiums up-front, they could be responsible for out-of-pocket costs several times higher for common or serious conditions, such as diabetes or a heart attack. The most popular plan in Atlanta refused to cover prescription drugs, mental health services, or maternity services, had pre-existing condition exclusions, and had a deductible three times as high as an ACA-compliant plan.⁵

Georgia’s proposal fails to meet Section 1332’s statutory guardrails and is therefore not approvable.

Because it would likely increase the number of uninsured Georgians and leave many others with worse coverage, the waiver fails to meet the statutory “guardrails” intended to ensure that people who live in states that implement a waiver under Section 1332 are not worse off than they would be without the waiver. Section 1332(b)(1) of the ACA requires that waivers cover as many people, with coverage as affordable and comprehensive, as would be covered without the waiver.⁶ However, under the proposed waiver, the coverage that many Georgians would have would be less comprehensive, as noted above in the discussion of substandard plans. Furthermore, Georgia’s proposal seems only to consider “affordability” in terms of premium cost, but the promotion of non-ACA compliant plans alongside ACA-compliant plans is likely to leave many with out-of-pocket costs that would be much higher than those they would face without the waiver, making their coverage much less affordable. And while Georgia states in its application that it expects an increase in enrollment under the waiver,⁷ a recent analysis from the Brookings Institution indicates that the State’s analysis is flawed in several respects and that Georgia would likely see a reduction, rather than an increase, in coverage under the 1332 waiver.⁸ The waiver therefore does not meet the guardrails under federal law and is not approvable.

In addition to our concerns about the impact of the waiver on Georgians, we are deeply concerned about the precedent that would be set by approving a waiver that is expected to

⁵ Dane Hansen & Gabriela Dieguez, *The impact of short-term limited-duration policy expansion on patients and the ACA individual market*, Milliman (Feb. 2020), <https://www.ils.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>; Kelsey Waddill, *Do Short-Term Limited Duration Plans Deserve Industry Skepticism?*, HealthPayerIntelligence (Mar. 4, 2020), <https://healthpayerintelligence.com/news/do-short-term-limited-duration-plans-deserve-industry-skepticism>.

⁶ 42 U.S.C. § 18052(b)(1).

⁷ Georgia Application 4.

⁸ Christen Linke Young & Jason Levitis, *Georgia’s latest 1332 proposal continues to violate the ACA*, Brookings Inst. (Sept. 1, 2020), <https://www.brookings.edu/research/georgias-latest-1332-proposal-continues-to-violate-the-aca>.

result in more people uninsured and more people enrolled in plans that do not provide comprehensive coverage than without the waiver, directly violating the statutory requirements.

Georgia has better options available to address its purported goals

Notably, the waiver also includes a proposal to establish a reinsurance program. Similar programs have been successfully implemented in other states, reducing premiums for unsubsidized consumers. Georgia could move forward with this proposal while dropping the harmful components of the waiver.

Even more important, Medicaid expansion offers Georgia the opportunity to expand coverage to hundreds of thousands of people. That would result in significant benefits to the state's residents, including fewer premature deaths and improved access to care and financial security for people gaining coverage.^{9,10} It should do so, rather than upending the state's insurance market at great risk to consumers.

Our comments include citations to supporting research, including direct links for the benefit of HHS in reviewing our comments. We direct HHS to the studies cited and made available to the agency through active hyperlinks, and we request that the full text of each of the studies cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

Sincerely,

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⁹ Matt Broaddus & Aviva Aron-Dine, *Medicaid Expansion Has Saved at Least 19,000 Lives, New Research Finds*, Ctr. on Budget & Policy Priorities (Nov. 6, 2019), <https://www.cbpp.org/research/health/medicaid-expansion-has-saved-at-least-19000-lives-new-research-finds>.

¹⁰ *Chart Book: The Far-Reaching Benefits of the Affordable Care Act's Medicaid Expansion*, Ctr. on Budget & Policy Priorities, <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid> (last updated Aug. 6, 2020).