MEDICARE RIGHTS CENTER
Getting Medicare right

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VIA ELECTRONIC SUBMISSION

January 7, 2022

Re: Georgia section 1332 waiver

Xavier Becerra, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Becerra:

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the Georgia section 1332 waiver. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to nearly three million people with Medicare, family caregivers, and professionals.

On November 1, 2020, the Trump Administration approved a section 1332 waiver allowing Georgia to exit HealthCare.gov starting in 2023. Today, we urge the Biden Administration to reverse this unwise decision before the waiver goes into effect.

In 2020, most (79%) of Georgia's individual marketplace enrollees used HealthCare.gov to sign up for coverage. Georgia's planned waiver will eliminate this one-stop shop, robbing consumers of their only option for a guaranteed, central source of unbiased information about the comprehensive coverage available to them. Instead, Georgians would be forced to rely on a jumble of private insurance companies and brokers to compare plans, apply for financial assistance, and enroll in coverage.

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Georgia asserts that this will increase enrollment and improve customer service but does not identify how.[1] Based on our experience, it is far more likely that the change will instead heighten confusion about where and how to access good-quality health coverage, thus hindering enrollment. Rather than increasing coverage rates, such a shift will likely result in many Georgians losing coverage entirely or being enrolled into non-ACA-compliant plans that will underinsure them, putting them at extreme financial risk if they become sick or injured.[2] Contrary to the promise of expanded choices, this waiver reduces options. Currently, Georgians have the option of using HealthCare.gov or private brokers and they overwhelmingly prefer HealthCare.gov. In 2023, they will be losing their preferred choice, not gaining a new one.

Moreover, private brokers and insurers 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.[3] Indeed, in the new Georgia system, people who are eligible for Medicaid will have a much harder time finding help with enrollment because Medicaid generally does not pay broker or plan commissions. Agents and brokers will have no financial incentive to fill these gaps.

Statutory guardrails require 1332 waivers to cover as many people, with coverage as affordable and comprehensive, as without the waiver.[4] Georgia has not provided a plausible explanation of how its waiver will accomplish this. Instead, coverage is likely to decline and to be less comprehensive, less available, and more expensive. The waiver therefore does not meet the federal standard for approval.

In its application, Georgia claimed the waiver was necessary to stem enrollment losses. Current statistics clearly demonstrate the flaws in Georgia's ACA enrollment assumptions. The state's post-waiver projected enrollment—392,000 in 2023—is lower than the 549,000 actually enrolled as of August 2021. These data reveal missing pieces in Georgia's analysis. At a minimum, the state must revise its analysis to account for significant changes that have increased enrollment, including statutory boosts in tax

[1] State of Georgia, "Modified Section 1332 State Relief and Empowerment Waiver," p 17 (July 31, 2020), https://medicaid.georgia.gov/patientsfirst ("The goal of the Georgia Access Model is to increase affordability and spur innovation in the individual market while maintaining access to QHPs and ensuring consumer protections for individuals with pre-existing conditions. The Georgia Access Model will create a competitive private insurance marketplace that provides Georgia's residents with better access, improved customer service, and expanded choice of affordable coverage options.")
[2] Tara Straw, "Tens of Thousands Could Lose Coverage Under Georgia's 1332 Proposal," Center on Budget and Policy Priorities (September 1, 2020), https://www.cbpp.org/research/health/tens-of-thousands-could-lose-coverage-under-georgias-1332-waiver-proposal.
[3] Tara Straw, "'Direct Enrollment' in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm," Center on Budget and Policy Priorities (March 15, 2019), https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes.
[4] Patient Protection and Affordable Care Act, Pub. L. 111-148, Sec. 1332(b) ("(1) IN GENERAL-The Secretary may grant a request for a waiver under subsection (a)(1) only if the Secretary determines that the State plan—(A) will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) and offered through Exchanges established under this title as certified by Office of the Actuary of the Centers for Medicare & Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by this Act and the provisions of this Act that would be waived; (B) will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of this title would provide; (C) will provide coverage to at least a comparable number of its residents as the provisions of this title would provide; and (D) will not increase the Federal deficit.")

credits, extended open enrollment periods, wider availability of special enrollment periods, and federal investments in marketing and navigators.

In addition, agencies must review the waiver for conflicts with Executive Orders on equity and health coverage. These Executive Orders require federal agencies to review new and existing policies to assess whether they advance equity for marginalized and historically underserved communities[5] and whether they undermine protections for people with pre-existing conditions, create barriers to coverage, reduce coverage, or reduce the affordability of coverage.[6]

As the current COVID-19 public health emergency reveals, the need for health care can arise at any moment and may be the difference between life and death. People without health coverage may avoid care or face extreme financial hardship when they obtain it. The interdependence of the major health insurance systems in the United States as well as public health makes an individual's access to coverage a national concern. For example, the Medicare program benefits when incoming beneficiaries have insurance coverage. As individuals approach Medicare eligibility, their health is often compromised, and this is especially true for those who have unmet health care needs from being un- or underinsured. This absence of quality coverage can lead to reduced well-being for entire families;[7] poorer health;[8] lack of access to care;[9] economic devastation;[10] and higher Medicare costs when they are ultimately eligible.[11]

In addition to our concerns about the impact of the waiver on Georgians, on public health, and on Medicare finances, and our position that the waiver is not legally sound, we are deeply concerned about the precedent that would be set by approving a waiver that is expected to result in more people being uninsured and more people being enrolled in plans that do not provide comprehensive coverage. The ACA must not be undercut by rules or waivers that limit its effectiveness.

For these reasons, Medicare Rights urges the Biden Administration to revoke approval of Georgia's waiver and stop these harmful changes before they start. The state should be encouraged instead to

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[5] Executive Order 13985 calls on federal agencies to review new and existing policies to assess whether they advance equity for marginalized and historically underserved communities.

[6] Executive Order 14009, on strengthening Medicaid and the Affordable Care Act, calls for an immediate review of all federal agency actions, with the goal of making coverage accessible and affordable to everyone. This includes policies that undermine protections for people with pre-existing conditions; waivers that may reduce coverage under Medicaid or the ACA; policies that undermine the marketplace; policies that create unnecessary barriers to families attempting to access ACA coverage; and policies that may reduce the affordability of coverage.

[7] Committee on the Consequences of Uninsurance, Board on Health Care Services, "Health Insurance is a Family Matter," INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, Chapter 5 (2002), https://www.ncbi.nlm.nih.gov/books/NBK221016/pdf/Bookshelf_NBK221016.pdf.

[8] David W Baker, et al., "Changes in Health for the Uninsured After Reaching Age-eligibility for Medicare," J GEN INTERN MED. 2006 Nov; 21(11): 1144–1149 (2006), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831646/.

[9] Committee on the Consequences of Uninsurance, Board on Health Care Services, "Health Insurance is a Family Matter," INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, pp 91-106 (2002), https://www.ncbi.nlm.nih.gov/books/NBK221016/pdf/Bookshelf_NBK221016.pdf.

[10] Rohan Khera, et al., "Burden of Catastrophic Health Expenditures for Acute Myocardial Infarction and Stroke Among Uninsured in the United States," CIRCULATION, 2018;137:00–00 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5780190/.

[11] David W Baker, et al., "Changes in Health for the Uninsured After Reaching Age-eligibility for Medicare," J Gen Intern Med. 2006 Nov; 21(11): 1144–1149 (2006), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831646/.

maintain HealthCare.gov access and to adopt the ACA's Medicaid expansion, a proven strategy to improve health care coverage and well-being that has the added benefit of support for rural hospitals.[12]

Thank you again for this opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Senior Federal Policy Associate at JCarter@medicarerights.org or 202-637-0962.

Sincerely,

Fred Riccardi

Fred Riccardi
President
Medicare Rights Center

[12] Hailey Mensik, "Medicaid expansion key indicator for rural hospitals' financial viability" (June 2, 2020), https://www.healthcaredive.com/news/medicaid-expansion-rural-hospitals-health-affairs/579005/.