

September 16, 2020

Submitted via email to: [StateInnovationWaivers@cms.hhs.gov](mailto:StateInnovationWaivers@cms.hhs.gov)

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

**Re: Georgia Section 1332 Waiver Comments**

Dear Secretary Azar, Secretary Mnuchin, and Administrator Verma,

The Disability Rights Education and Defense Fund (“DREDF”) appreciates the opportunity to provide comment on the state of Georgia’s Section 1332 waiver proposal. DREDF is a national cross-disability law and policy center that protects and advances the civil and human rights of people with disabilities through legal advocacy, training, education, and development of legislation and public policy. We are committed to increasing accessible and equally effective healthcare for people with disabilities and eliminating persistent health disparities that affect the length and quality of their lives. DREDF has significant experience in both Medicaid and private insurance barriers given that disabled individuals disproportionately earn lower incomes and live in poverty. Individuals with disabilities and preexisting conditions and their families have always struggled with health underinsurance,<sup>1</sup> fearful of any health changes or additional life stresses that could trigger a cycle of high out-of-pocket costs, reduced health and ability to work, and lost revenue that usually led to further negative health changes and consequences. The passage of the Affordable Care Act (ACA) has brought considerable relief to people with disabilities, but barriers to health care access and quality insurance have not fully gone away.

Our comment on Georgia’s proposal to exit the federal marketplace while waiving the applicability of key federal rules enacted under the Affordable Care Act arises out of concern for Georgians with disabilities as well as people with disabilities throughout the country since Georgia’s application may prompt similar proposals from other states. Approximately 500,000 Georgians are currently enrolled in private plans or Medicaid through the critical gateway of HealthCare.gov, yet Georgia’s application “dumps” the marketplace without proposing a

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<sup>1</sup> Jae Kennedy, Elizabeth Geneva Wood, & Lex Frieden, *Disparities in Insurance Coverage, Health Services Use, and Access Following Implementation of the Affordable Care Act: A Comparison of Disabled and Nondisabled Working-Age Adults*, 54 INQUIRY (2017), at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5798675/>.

substitute. Despite the state's attempt to frame the waiver as leading to increasing choice, its impact will be exactly the opposite.

If the waiver is approved by the Centers for Medicare and Medicaid Services (CMS) and the Department of the Treasury, Georgia will be reinstating a fragmented health coverage system, the proliferation of insurance products that are difficult to comprehend and compare, and reverse incentives for insurance brokers and companies to steer individuals toward products that offer higher commissions rather than the coverage needed by individual consumers. This is the kind of system that could cause tens of thousands of Georgians to fall through the cracks and lose coverage altogether, while other people, including some low-income persons with disabilities and pre-existing conditions, would likely end up in skimpy plans that impose high costs if they get sick.<sup>2</sup> Georgia's stated intention with this 1332 waiver application is to reduce the number of uninsured individuals in the state, but there is little evidence to suggest that Georgians are going without health insurance because they only want to purchase non-comprehensive coverage with high deductibles outside of the marketplace. In any event, there is nothing to stop such individuals from doing so even if the marketplace option is *not* eliminated.

Georgia's desire to reduce the number of uninsured Georgians should instead focus on the option to expand Medicaid to low-income adults under the ACA, a proposal which would sharply reduce the state's uninsured rate, bolster coverage of COVID-19 testing and treatment in the ongoing pandemic, and bring billions in additional federal funding into the state. If Georgia were to join 38 other states and DC and adopt the ACA's expansion of Medicaid to low-income adults it would directly benefit low-income disabled persons in the state who fall just above the state's Medicaid income eligibility level, and will also benefit those individuals with significant disabilities who rely on home and community-based services and supports, including care from paid and/or unpaid personal care assistants. In general, even for those who are paid, the diverse direct care workforce is not a lucrative occupation and available positions often lack benefits. A growing percentage of caregivers in 2020 reported being in fair

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<sup>2</sup> 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>.

or poor health (21%) and one in four reported difficulty taking care of their own health.<sup>3</sup> People with disabilities need access to reliable and healthy caregivers and have a vested interest in ensuring that longtime personal care assistants with whom they have established a rapport, as well as family members and friends who provide care more informally, have access to comprehensive health benefits that include coverage of mental health care, prescription drugs, and rehabilitative and habilitative care. Medicaid expansion, in conjunction with a stable marketplace and a streamlined application process that will direct applicants to affordable health coverage that best serves the needs of low-income individuals, is the best option for working Georgians with disabilities and preexisting conditions and their families.

### **The Proposed Waiver Will Insure Fewer People and Encourage Enrollment in Subpar Plans**

The ACA 1332 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. Georgians have come to rely on the convenience of HealthCare.gov's "one-stop shop" to find, learn about, and compare plans, as well as apply for financial assistance and ultimately enroll in a chosen plan. Taking away HealthCare.gov as an option for these functions and forcing individuals to use only private insurance companies and brokers will increase confusion about where and how to access good-quality health coverage, hinder enrollment, and prompt individuals and families who don't have time to engage in hours of research to give up and either choose an option that is not in their best interest or to forego insurance altogether.

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.<sup>4</sup>

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<sup>3</sup> AARP, "Caregiving in the U.S.," Executive Summary (May 2020) ES-3, at <https://www.caregiving.org/wp-content/uploads/2020/05/Executive-Summary-Caregiving-in-the-United-States-2020.pdf>.

<sup>4</sup> Tara Straw, "'Direct Enrollment' in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm," Center on Budget and Policy Priorities, March 15, 2019,

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 proposes that substandard plans, such as short-term plans, would be presented alongside comprehensive insurance. Even now, brokers sometimes steer people into such plans, which often come with higher commissions, a tactic that has continued during the pandemic.<sup>5</sup> People enrolled in subpar plans are subject to punitive exclusions of their pre-existing conditions, benefit limitations, and caps on plan reimbursements that expose them to potentially high out-of-pocket costs. 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.<sup>6</sup>

While some individuals only have a single pre-existing condition or disability, co-occurring disabilities or physical and mental health conditions are hardly uncommon, particularly as individuals age, and especially in the aftermath of the pandemic and increased social isolation. People with disabilities also have all the same, if not higher, preventive care needs and

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<https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>.

<sup>5</sup> Christen Linke Young and Kathleen Hannick, "Misleading marketing of short-term health plans amid COVID-19," Brookings Institution, March 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/>.

<sup>6</sup> Dane Hansen and Gabriela Dieguez, "The impact of short-term limited-duration policy expansion on patients and the ACA individual market," Milliman, February 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, March 4, 2020, <https://healthpayerintelligence.com/news/do-short-term-limited-duration-plans-deserve-industry-skepticism>.

screenings as everyone else,<sup>7</sup> and in addition require regular care for their primary disability or disabilities. They should not be forced to choose between these needs, or be subject to exorbitantly high deductibles as they gamble on their health needs staying minor or stable for a given period of time.

### **The Waiver Violates Statutory Requirements**

Because it would likely increase the number of uninsured Georgians and leave many others with worse coverage, the ACA waiver fails to meet the statutory “guardrails” intended to ensure that people who live in states that implement an ACA waiver are not worse off than they would be without the waiver. Section 1332(b)(1) of the ACA requires that ACA waivers cover as many people, with coverage as affordable and comprehensive, as the ACA would cover without the waiver. However, under Georgia’s proposed waiver, many Georgians would have less comprehensive coverage, would find themselves paying more for less affordable coverage, and footing higher out-of-pocket costs than would be the case without the waiver. As a result, Georgia would likely see a reduction, rather than an increase, in coverage under the 1332 waiver. The waiver therefore does not meet the guardrails under federal law and cannot be approved.

In addition to our concerns about the impact of the waiver on Georgians, DREDF is deeply concerned about establishing a precedent for approving a waiver that will foreseeably result in greater numbers of people uninsured and/or enrolled in plans that do not provide comprehensive coverage than would be the case without the waiver, in direct violation of the ACA’s statutory requirements.

### **Georgia Should Explore Other Options to Address the Waiver’s 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 positive proposal while dropping the unproven and harmful components of the waiver.

Even more important, Medicaid expansion offers Georgia the opportunity to extend coverage to hundreds of thousands of people, including low-income persons with pre-existing conditions and disabilities that could stay healthier and remain functional with potential access to a

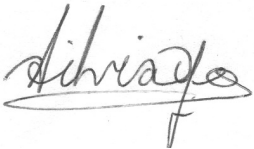
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<sup>7</sup> People with disabilities are more likely to smoke, have three times the likelihood of having heart disease, and more than double the likelihood of diabetes, as people without disabilities. Centers for Disease Control, “Disability Impacts Us All,” September 16, 2020, at <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

comprehensive slate of urgent care and home and community-based services. The result would bring significant benefits to the state's residents, including fewer premature deaths and improved access to care and financial security for people gaining coverage.<sup>8,9</sup> For people with disabilities in particular, Medicaid expansion in other states has led to greater employment opportunity and sustainable health.<sup>10</sup> DREDF urges CMS to not approve Georgia's 1332 waiver application which will upend the state's insurance market and subject its residents with disabilities and their families to great anxiety and confusion about how to find their best options for affordable and comprehensive insurance. DREDF strongly recommends that CMS not approve Georgia's 1332 application which will limit choices for Georgians with disabilities and preexisting conditions and place their health coverage and their health at risk.

Thank you again for the opportunity to submit comments. We would welcome the opportunity to answer any questions you may have on the above or discuss any of the issues raised.

Sincerely,

A handwritten signature in black ink, appearing to read 'Silvia Yee', written over a horizontal line.

Silvia Yee  
Senior Staff Attorney

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<sup>8</sup> Matt Broaddus and Aviva Aron-Dine, "Medicaid Expansion Has Saved at Least 19,000 Lives, New Research Finds," Center on Budget and Policy Priorities, November 6, 2019, <https://www.cbpp.org/research/health/medicaid-expansion-has-saved-at-least-19000-lives-new-research-finds>.

<sup>9</sup> Center on Budget and Policy Priorities, "Chart Book: The Far-Reaching Benefits of the Affordable Care Act's Medicaid Expansion," Updated November 6, 2019, <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid>.

<sup>10</sup> Jean P. Hall, Adele Shartzter, Noelle K. Kurth, and Kathleen C. Thomas, "Medicaid Expansion as an Employment Incentive Program for People with Disabilities," 108 American Journal of Public Health, 1235-1237, at <https://doi.org/10.2105/AJPH.2018.304536>.