

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

September 16, 2020

The Honorable Alex Azar, Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Ave., S.W.
Washington, D.C. 20201

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

Re: Georgia Section 1332 Waiver Comments

Justice in Aging appreciates the opportunity to comment on Georgia's proposed Section 1332 Waiver. For the reasons discussed below, we oppose the proposal to waive Affordable Care Act (ACA) rules and exist the federal health insurance marketplace. We urge the Centers for Medicare & Medicaid Services (CMS) to reject this proposal and instead work with Georgia to fully expand Medicaid under the ACA.

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older Georgians and older adults nationwide. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources, particularly populations that have traditionally lacked legal protection such as women, people of color, LGBTQ individuals, and people with limited English proficiency. We have decades of experience with Medicare and Medicaid and have worked extensively with advocates who represent low-income older Georgians. Justice in Aging conducts trainings and engages in advocacy regarding Medicare and Medicaid, provides technical assistance to attorneys in Georgia and across the country on how to address problems that arise under these programs, and advocates for strong consumer protections at both the state and federal level.

[The Proposal Would Make It More Difficult for Older Georgians to Get Health Coverage](#)

Under the proposal, Georgia is seeking to use Section 1332 authority to create a new individual market and state subsidy program that does not guarantee subsidies to all eligible individuals nor require subsidy-eligible plans to meet ACA standards, and puts private insurers and brokers in charge of enrollment. This waiver fails to meet Section 1332's "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 because, as discussed in more detail below, it would likely increase the number of uninsured Georgians and leave many others with worse coverage. Therefore, it is not approvable.

The federally facilitated marketplace, premium tax credits, and cost-sharing reductions enabled over 460,000 Georgians to obtain comprehensive health insurance in 2020.¹ Nearly half of those enrollees are over age 45, and 1 in 4 are over age 55. The average premium tax credit received by over 380,000

¹ Kaiser Family Foundation, Marketplace Enrollment, 2014-2020, www.kff.org/health-reform/state-indicator/marketplace-enrollment/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

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Georgians is \$536 per month, \$22 higher than the national average.² This adds up to an estimated \$2.4 billion in premium tax credits benefiting low- and middle-income Georgians. The state’s proposal to cap enrollment in this assistance is misguided. Even if the state could make subsidies available to an additional 16,000 Georgians at the proposed funding level, this is well-short of helping the 1.4 million uninsured Georgians access coverage. In fact, 435,000 uninsured individuals are already eligible for premium tax credits but not enrolled.³ In addition, the state would be able to cover nearly 500,000 more Georgians by fully expanding Medicaid. Therefore, to help the most Georgians get affordable coverage, the state should fully expand Medicaid and invest in robust enrollment and outreach while maintaining the entirely federally funded marketplace subsidies.

Allowing plans that do not meet the quality and minimum coverage standards for Qualified Health Plans (QHPs) will take Georgia back to the days before the Affordable Care Act when people were dangerously underinsured and insurance companies could price people out of comprehensive coverage. The state’s assumption that QHP premiums would only increase by 1.1% and that only 10% of current QHP enrollees would opt for a non-QHP plan does not seem to take into full account the combination of factors that will drive people to choose non-QHP coverage. Namely, in addition to the increase in QHP premiums, QHPs will be marketed by biased insurance companies and brokers alongside less expensive non-QHPs that are eligible for tax credits. The draft application does not explain any guardrails to prevent or limit the gap in premiums between QHPs and non-QHPs. This will hurt older adults the most because they are more likely to need comprehensive coverage from QHPs given that they are more likely to have chronic health conditions than younger adults. Thus, older adults will be faced with higher and higher premiums, amounting to another “age tax” on top of the already allowable premium increases based on age.

We are also concerned about requiring Georgians to use private insurers and brokers to obtain health insurance. Private brokers and insurers can and do push enrollment in plans based on the commission they receive rather than on the consumer’s best interest. Unfortunately, we have seen that this means even those who operate through HealthCare.gov do not always inform consumers of Medicaid eligibility, denying those low-income individuals access to the best coverage available to them and saddling them with insurance costs they would not have to pay in Medicaid.⁴

² Kaiser Family Foundation, Estimated Total Premium Tax Credits Received by Marketplace Enrollees, www.kff.org/health-reform/state-indicator/average-monthly-advance-premium-tax-credit-aptc.

³ Kaiser Family Foundation, Distribution of Eligibility for ACA Health Coverage Among those Remaining Uninsured as of 2018, <https://www.kff.org/health-reform/state-indicator/distribution-of-eligibility-for-aca-coverage-among-the-remaining-uninsured/>.

⁴ Ctr. on Budget and Policy Priorities, Direct Enrollment in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm (Mar. 15, 2019), www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes.

Finally, we have seen recent examples of people signing up for non-QHP coverage and being left with huge medical bills or having to forgo care because their plan does not cover it.⁵ This proposal would amplify this dangerous trend by making these inadequate plans even less expensive, eliminating the platform (HealthCare.gov) that presents unbiased information about QHPs, and allowing self-interested insurers and brokers to aggressively market and sell non-QHPs.

Conclusion

For these reasons, we urge your agencies not to approve this waiver. Instead, Georgia could move forward with its proposal to establish a reinsurance program and expand Medicaid. Doing so would result in fewer premature deaths among older adults and others and improve access to care and financial security for people gaining coverage.⁶

If any questions arise concerning this submission, please contact Natalie Kean, Senior Staff Attorney, at nkean@justiceinaging.org.

Sincerely,



Jennifer Goldberg
Deputy Director

⁵ Commonwealth Fund, Health Plans That Don't Comply with the ACA Put Consumers at Risk (Nov. 2019), www.commonwealthfund.org/blog/2019/health-plans-that-dont-comply-with-aca-put-consumers-at-risk.

⁶ Ctr. on Budget and Policy Priorities, "Medicaid Expansion Has Saved at Least 19,000 Lives, New Research Finds," (Nov. 6, 2019), www.cbpp.org/research/health/medicaid-expansion-has-saved-at-least-19000-lives-new-research-finds; Ctr. on Budget and Policy Priorities, "Chart Book: The Far-Reaching Benefits of the Affordable Care Act's Medicaid Expansion," Updated November 6, 2019, www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid.