

CLASP

Policy solutions that work for low-income people

September 15, 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: StatInnovationWaivers@cms.hhs.gov

Subject: Georgia Section 1332 Waiver Comments

From: Suzanne Wikle

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Dear Secretary Azar, Secretary Mnuchin, and Administrator Verma,

I am writing on behalf of the Center for Law and Social Policy (CLASP). CLASP is a national, nonpartisan, anti-poverty nonprofit advancing policy solutions for low-income people. We work at both the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP submits the following comments in response to Georgia's 1332 waiver request to exit the federal marketplace with no substitution. CLASP has deep concerns about Georgia's waiver request because it would eliminate the central source of help for the roughly 500,000 Georgians who enroll in private health plans or Medicaid through healthcare.gov.

Georgia's application frames the waiver as a solution for the state's high uninsured rate. But the best solution to that problem is to join 38 other states and DC and adopt the ACA's expansion of Medicaid to adults with low incomes. CLASP is distressed that Georgia is instead proposing a fragmented system that could cause tens of thousands of Georgians to fall through the cracks and lose coverage altogether, while other people would likely end up in skimpy plans that impose high costs if they get sick.¹ CLASP strongly urges you not to approve the 1332 waiver application and instead encourage Georgia to adopt Medicaid expansion, which would sharply reduce the state's uninsured rate, help with responding to the ongoing pandemic, and bring billions in additional federal funding into the state.

The Proposal 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. 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

¹ 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>

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.

CLASP has engaged in extensive work examining the barriers to people enrolling in programs for which they are eligible, such as Medicaid and Advanced Premium Tax Credits (APTCs). The evidence is clear that the less streamlined and more cumbersome an application process it, the fewer people will enroll. Healthcare.gov provides a streamlined approach to health insurance enrollment, whether people are eligible for Medicaid or APTCs, or are purchasing insurance without APTCs. Removing this tool and instead relying on individual brokers or insurer websites adds unnecessary layers and burdens that will result in people not completing the process to enroll in health insurance.

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. By contrast, HealthCare.gov automatically transfers the applications of people who are assessed eligible for Medicaid to the state agency.

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.³ 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.⁴

The Proposal 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 without the

² 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>

³ 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/>.

⁴ 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>.

waiver. However, under the proposed waiver, the coverage that many Georgians would have would be less comprehensive, and more people would find themselves with less affordable coverage and out-of-pocket costs than would be the case without the waiver. And 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 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 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 to Address 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 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.^{5,6} It should do so, rather than upending the state's insurance market at great risk to consumers. If the true aim of the state is to increase the number of Georgians with health insurance, expanding Medicaid is the best way to demonstrate that commitment. Without expansion, hundreds of thousands of Georgians will remain in the coverage gap with no affordable options for care. Should the state's request to leave the federal marketplace and not replace it with a state marketplace move forward, the lack of Medicaid expansion leaves those in the coverage gap particularly vulnerable to persuasion to buy skinny plans that may appear affordable but in reality offer little to no actual health coverage.

Thank you for considering CLASP's comments. Contact Suzanne Wikle (swikle@clasp.org) with any questions.

⁵ 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>

⁶ 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>