

Congress of the United States

Washington, DC 20515

November 12, 2020

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Azar, Secretary Mnuchin, Administrator Verma, and Commissioner Rettig:

We write with profound concern regarding the Trump administration's recent approval¹ of waivers submitted by Georgia under section 1115 of the *Social Security Act*² and 1332 of the *Affordable Care Act (ACA)*³ (hereinafter "1115 waiver" and "1332 waiver", respectively). These waivers will severely undermine access to health care for thousands of individuals and families in Georgia. Under these waivers, the Trump Administration is allowing Georgia to impose burdensome and illegal work requirements and premiums on beneficiaries in its Medicaid program and to eliminate Healthcare.gov in the state, gutting access to critical sources of affordable and comprehensive health coverage during an unprecedented public health and economic crisis. As we write this, over 377,000 people in Georgia have been diagnosed with COVID-19 and over 7,800 Georgians have died. Families across the state have lost their jobs and their employer-sponsored health insurance. Yet, instead of safeguarding access to health care, the Administration has chosen to wage an ideological crusade against Medicaid and the ACA, regardless of the consequences for American families. As described below, these waiver approvals are illegal, reckless, and outrageous, and we urge you to rescind them immediately before they make it harder for families to get the care they need.

These waivers will harm Georgia residents and deprive thousands of its residents of comprehensive health coverage. For example, under Georgia's 1115 waiver, which the Centers for Medicare & Medicaid Services (CMS) approved on October 15, 2020, the state has been approved to impose burdensome work requirements on Medicaid coverage for adults with incomes up to 100 percent of the federal poverty level (\$12,760 per year for a single individual).

¹ https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-/1332-GA-Approval-Letter-STCs.pdf; <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ga/ga-pathways-to-coverage-ca.pdf>

² 42 U.S.C. § 1315

³ 42 U.S.C. § 18052

CMS did not ask the state to justify conditioning coverage on work during an economic downturn when, as of September 2020, 12.6 million Americans remain unemployed.⁴ Rather, CMS issued the approval in defiance of clear and mounting evidence that Medicaid work requirements lead to coverage losses and do nothing to encourage employment. A recent study of Medicaid work requirements in Arkansas found that 18,000 people lost coverage less than a year after that waiver took effect.⁵ After approval and substantial coverage losses, the Arkansas waiver was subsequently put on hold by a federal court. Yet, the Trump Administration continues to promote and approve harmful work requirements like those in Georgia. Georgia itself admitted that work requirements would severely limit enrollment in its Medicaid program: though 267,000 residents fall in the coverage gap today, the state estimated that its waiver would cover just 25,000 people—presumably because the waiver’s work requirements, premiums, and other restrictions would block the vast majority of uninsured low-income adults from gaining coverage in the state.⁶

Georgia’s 1332 waiver will add further barriers to coverage for thousands in the state. Approved by CMS on November 1, 2020, the waiver allows the state to eliminate Healthcare.gov without standing-up a state-based marketplace in its place. As a result, consumers will be forced to navigate a decentralized landscape of private vendors’ websites to enroll in health plans. As we wrote just a few weeks ago,⁷ the consequences could be catastrophic. As Americans lose access to employer-sponsored insurance during the economic downturn, millions of families are turning to subsidized Marketplace plans and Medicaid to keep themselves and their families insured during the pandemic. Under Georgia’s 1332 waiver, these consumers will have a harder time finding affordable coverage, and will be pushed to enroll in substandard junk plans such as short-term, limited duration insurance that are not subject to the ACA’s consumer protections, including protections for people with pre-existing conditions. As a result, Georgia’s 1332 waiver could cause 35,000 to 90,000 people to lose coverage in the first year alone.⁸ More families will also find themselves facing significant and unforeseeable medical debt as a result of the deceptive practices of junk plans, further straining already paper-thin budgets in the middle of a recession.

Beyond imposing these severe harms on Georgia families, both waivers are blatant violations of federal law. As we have written numerous times in the past—and as multiple federal judges have already ruled—these Medicaid work requirements violate federal law. The law permits states to waive certain federal Medicaid requirements *only if* such waivers achieve the Medicaid Act’s primary objective—that is, to provide health coverage to eligible individuals.⁹ By obstructing access to coverage and care, Medicaid waivers that impose work requirements and other harmful restrictions fail to meet this clear standard. Yet, neither CMS nor

⁴ U.S. Bureau of Labor Statistics, “The Employment Situation—September 2020” (October 2, 2020), <https://www.bls.gov/news.release/pdf/empsit.pdf>.

⁵ <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00538>

⁶ <https://www.healthinsurance.org/georgia-medicaid/>

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https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/HHS.DOT_CMS_IRS_9.16.20.pdf

⁸ The Brookings Institution, Georgia’s Latest 1332 Proposal Continues to Violate the ACA (Sept. 2020) (www.brookings.edu/research/georgias-latest-1332-proposal-continues-to-violate-the-aca).

⁹ 42 U.S.C. § 1315(a)

Georgia presented an explanation addressing these concerns in this latest approval. Moreover, Georgia provided no explanation for how its 1115 waiver would align with the maintenance of effort requirements outlined in the *Families First Coronavirus Response Act*,¹⁰ which require states to comply with certain eligibility and enrollment protections in order to receive enhanced federal Medicaid funding during the public health emergency.

The approval of Georgia's 1332 waiver also defies clear federal requirements set forth in statute. Section 1332 of the ACA provides states with the flexibility to experiment with health insurance reforms to provide coverage to their residents as long as states satisfy four statutory guardrails. Section 1332 waivers must provide coverage that is (1) at least as comprehensive as under the ACA, (2) as affordable as under the ACA, (3) available to as many residents as under the ACA, and (4) provided without increasing the federal deficit.¹¹ Georgia's 1332 waiver fails this test as it would result in massive coverage losses and drive people into junk plans that are far less comprehensive than plans subject to the ACA. Thus, by approving this waiver, the Administration appears to have simply ignored these clear statutory protections in an attempt to undermine the ACA.

The recent approval of both Georgia's 1115 waiver and Georgia's 1332 waiver will have profound consequences for thousands of people in the state. Because of these waivers, families will face more coverage losses and deeper medical debt during a pandemic that, due to this Administration's mismanagement, continues to threaten the lives and well-being of Americans across the country. Now more than ever, it is critical that the Administration protect access to care instead of pursuing an ideological agenda against Medicaid and the ACA. For these reasons, we urge you to rescind these approvals immediately.

Sincerely,



Ron Wyden
Ranking Member
Senate Committee on Finance



Patty Murray
Ranking Member
Senate Committee on Health,
Education, Labor, and Pensions



Richard E. Neal
Chairman
Committee on Ways and
Means



Frank Pallone, Jr.
Chairman
Committee on Energy and
Commerce



Robert C. "Bobby" Scott
Chairman
Committee on Education and
Labor

¹⁰ Pub. L. No. 116-127, § 6008

¹¹ 42 U.S.C. § 18052