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September 23, 2020

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: [StateInnovationWaivers@cms.hhs.gov](mailto:StateInnovationWaivers@cms.hhs.gov)

Subject: Georgia Section 1332 Waiver Comments

Dear Secretary Azar, Secretary Mnuchin, and Administrator Verma,

The National Women's Law Center (The Law Center) is an organization that has fought for gender justice in the courts, in public policy, and in our society for almost fifty years. We protect women and families in core aspects of their lives, including employment, income security, education, and health and reproductive rights, with an emphasis on the needs of low-income women and those who face multiple and intersecting forms of discrimination.

We appreciate the opportunity to comment on Georgia's Section 1332 proposal to waive federal rules under the Affordable Care Act (ACA). The Law Center requests the Department of Health and Human Services reject this 1332 waiver application.

Under this proposal, Georgia seeks to exit the federal marketplace and eliminate the central source of help for the approximately 500,000 Georgians who enroll in private health plans or Medicaid through HealthCare.gov. Georgians would now need to go to private insurance companies and brokers to sign up for health care coverage.

This change would particularly harm women, who consist of 56% of Georgians who enrolled in the marketplace plans during 2019 open enrollment.<sup>1</sup> Tens of thousands of Georgians will inevitably fall through the cracks and lose coverage altogether, while others would be ushered into less comprehensive, higher-cost plans.<sup>2</sup>

Rather than seek approval for this unlawful and harmful waiver, Georgia should join 38 other states and DC and adopt the ACA's expansion of Medicaid to low-income adults. If Georgia adopted Medicaid expansion it would sharply reduce the state's uninsured rate, increase resources to address the ongoing pandemic, improve the wellbeing of women and families, and bring billions in additional federal funding to Georgia.

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<sup>1</sup> Centers for Medicare & Medicaid Services (CMS), 2019 Marketplace Open Enrollment Period Public Use Files. 458,437 Georgians enrolled in the marketplace plans during 2019 open enrollment, 257,768 (56%) were women.

<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>

## **Georgia's Proposal Will Cover Fewer People and Encourage Enrollment in Substandard Plans.**

Georgia's 1332 waiver would eradicate the primary way people shop for and enroll in health plans. In 2020, the vast majority (79 percent) of Georgia marketplace enrollees chose to sign up for coverage using HealthCare.gov, even though they already had the option to use a private broker or insurer website.<sup>3</sup>

Georgia's waiver would eliminate access to the centralized and comprehensive HealthCare.gov platform, and instead force people in the state to use private insurance companies and brokers. Georgia downplays this as a "minor modification," but it is a significant shift.<sup>4</sup> Georgians would be cut off from unbiased navigators who are trained to help consumers compare review and select plans, apply for financial assistance and enroll in coverage. This will undoubtedly hinder enrollment by limiting neutral, unbiased information about plans and costs and increasing confusion about where and how to access good-quality health coverage. Contrary to the promise of expanded choices, this waiver would take away consumers' only option for a guaranteed, central source of unbiased information on the comprehensive coverage available to them.

Georgia's waiver also proposes that substandard plans, such as short-term plans, would be presented alongside comprehensive, ACA-compliant plans. Even now, brokers sometimes steer people into such plans, which often come with higher commissions, a tactic that has continued during the pandemic. These subpar plans could exclude coverage pre-existing conditions, limit benefits, and allow caps on plan reimbursements. For example, a study of short-term plans in Atlanta earlier this year showed that 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>5</sup>

Allowing subpar, non-ACA compliant plans to be presented to consumers would particularly harm women.<sup>6</sup> The ACA prohibits insurance companies from charging women more than men for the same coverage and requires plans to cover a list of essential benefits preventive services, including maternity services, birth control and well-woman visits, without out-of-pocket costs. The ACA's

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<sup>3</sup> Georgia Section 1332 State Innovation Waiver as submitted to CMS on July 31, 2020, p. 70.

[https://www.cms.gov/CCHIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_state\\_Innovation\\_Waivers-](https://www.cms.gov/CCHIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-)

<sup>4</sup> *Id.*

<sup>5</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.lls.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>.

<sup>6</sup> NWLC Factsheet: The Risk of Repeal: How ACA Repeal Will Hurt Women's Health and Economic Security, December 2016, <https://nwlc.org/wp-content/uploads/2016/12/The-Risk-of-Repeal-FS-1.pdf>



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protection for those with pre-existing conditions is especially important for women since approximately 611,570 women of reproductive age (18-54) in Georgia have pre-existing conditions.<sup>7</sup>

Because women generally have more health care needs and are more vulnerable to high health costs, being pushed into these subpar plans could mean delaying or avoiding getting care, higher likelihood of being denied care, higher medical debts, and worse health outcomes for women.<sup>8</sup>

Additionally, Medicaid-eligible Georgians would have a much harder time finding enrollment assistance under Georgia's proposal. An estimated 40,000 Georgians each year have visited Healthcare.gov during open enrollment and have been assessed eligible for Medicaid.<sup>9</sup> With the Healthcare.gov system, any person considered Medicaid-eligible, would be transferred to the state Medicaid agency, which would work with the individual to complete enrollment. However, private brokers have no incentive to transfer an application.

In fact, Georgia brokers and insurers have a demonstrated history of failing to alert consumers of Medicaid eligibility and instead enrolling Medicaid-eligible consumers in the plans they offer, often based on the size of plan commissions.<sup>10</sup> Unlike navigators who have standards and responsibilities when they help consumers look for and enroll in health care coverage through the Marketplace, private brokers and insurers have no duty to inform Medicaid-eligible consumers of their eligibility and are incentivized by commissions from the insurance companies.

Thus, eliminating Healthcare.gov would substantially reduce Medicaid coverage because agents and brokers have no incentive to ensure the Medicaid-eligible population enroll in Medicaid.

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<sup>7</sup> NWLC Calculations based on U.S. Census Bureau, 2019 Current Population Survey (CPS) and Kaiser Family Foundation, Pre-Existing Condition Prevalence for Individuals and Families, October 2019, <https://www.kff.org/health-reform/issue-brief/pre-existing-condition-prevalence-for-individuals-and-families/>.

<sup>8</sup> NWLC Factsheet: Women and Health Reform: An Introduction to the Issues, <https://www.nwlc.org/sites/default/files/pdfs/WomenandHealthReform.pdf>

<sup>9</sup> Christen Linke Young and Jason Levitis, "Georgia's latest 1332 proposal continues to violate the ACA," Brookings.edu, September 1, 2020, <https://www.brookings.edu/research/georgias-latest-1332-proposal-continues-to-violate-the-aca/>

<sup>10</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, <https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>

## Georgia Could Better Address the Waiver's Purported Goals by Expanding Medicaid

Instead of seeking this harmful 1332 waiver, Georgia should focus on expanding Medicaid. Medicaid expansion 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.<sup>11,12</sup>

Increasing Medicaid access is essential to the well-being of women and families in Georgia. In 2018, 568,600 women in Georgia lack any type of health coverage.<sup>13</sup> Of these, an estimated 137,000 women were without coverage because of Georgia's refusal to expand Medicaid. Right now, these women face a harmful coverage gap. Their incomes are too high to qualify for Georgia's current Medicaid program, but too low to qualify for financial assistance under the federal health insurance marketplace. Because uninsured Georgia women, especially those with low incomes, are more likely to go without health care because of cost, this coverage gap has significant implications for women's health and participation in the workforce. Expanding Medicaid would give women access to range of services needed throughout their lives – birth control, maternity care, mental health care, prescription drugs, hospitalization, long-term care, and more.<sup>14</sup>

Medicaid expansion would also help address the staggering health disparities among women of color in Georgia. For example, Georgia has the highest maternal mortality rate in the country, the rate is alarmingly high for Black women, 66.6/100,000 compared to 43 for white women.<sup>15</sup> At the same time, uninsured women are four times more likely to die of pregnancy-related complications. Based on the Law Center's calculations, among the approximately 252,000 women who could gain coverage after Medicaid expansion, 36% are Black women, 24% are Latinas, 3% are Asian American and Other Pacific Islander women, and 0.7% are Native women.<sup>16</sup>

## The Proposal Violates Statutory Requirements

Under the proposed waiver, more Georgians would be without coverage or have substandard, higher costs coverage than would be the case without the waiver. The waiver would likely have an even greater impact on women in Georgia since they are the majority using Healthcare.gov to apply

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<sup>11</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>12</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>13</sup> Kaiser Family Foundation estimates based on the Census Bureau's American Community Survey, 2008-2018. <https://www.kff.org/uninsured/state-indicator/rate-by-gender/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

<sup>14</sup> Mara Gandal-Powers, NWLC Blog: Wins for Medicaid Are Wins for Women, November 8, 2018, <https://nwlc.org/blog/wins-for-medicaid-are-wins-for-women/>

<sup>15</sup> Alex Camardelle, "Women-Powered Prosperity," Georgia Budget & Policy Institute, September 10, 2019, <https://gbpi.org/women-powered-prosperity-report/>

<sup>16</sup> NWLC calculations based on 2018 American Community Survey 1-Year Estimates using IPUMS.



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for coverage, are generally subject to higher costs and worse coverage, and more likely to depend on Medicaid for their health coverage than men.<sup>17</sup> Section 1332(b)(1) of the ACA requires that ACA waivers cover as many people as without the waiver and with coverage that is as affordable and comprehensive as without the waiver. Here, the proposed 1332 waiver violates this statutory requirement because Georgians, especially women, would be worse off than they would be without the waiver.

In addition to our concerns about the impact of the waiver on Georgians, we are deeply concerned about the precedent set by approving a waiver that is expected to result in more people without coverage and more people enrolled in plans that do not provide comprehensive coverage, directly violating the statutory requirements.

### **Conclusion**

Women are essential to the prosperity of Georgia and centering women in policy considerations is key to the overall wellbeing of the state. Thus, if Georgia is committed to reducing the state's uninsured rate and improving the lives of women and families, they should reject this 1332 proposal and instead expand Medicaid.

Sincerely,

Theresa Lau  
Senior Counsel  
The National Women's Law Center

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<sup>17</sup> Alex Camardelle, "Women-Powered Prosperity," Georgia Budget & Policy Institute, September 10, 2019, <https://gbpi.org/women-powered-prosperity-report/>