

February 3, 2020

The Honorable Alex Azar Secretary  
Department of Health and Human Services  
200 Independence Ave., SW  
Washington, DC 20201

Re: Comments Georgia's 1115 "Pathways to Coverage" Waiver Application

Dear Secretary Azar,

Thank you for the opportunity to comment on Georgia's 1115 Medicaid demonstration waiver application. I am writing to express Georgians for a Healthy Future's deep concern about the state's so-called Georgia Pathways to Coverage plan.

Georgians for a Healthy Future (GHF) is a statewide, non-profit consumer health advocacy and policy organization. Our organization's vision is of a day when all Georgians have access to the quality, affordable health care they need to live healthy lives and contribute to the health of their communities. Since our founding in 2008, we have actively led education and advocacy efforts to expand health coverage to low-income and under-resourced Georgians. As a part of those efforts, we have made it a priority to interview and talk with low-income Georgians across the state who stand to benefit from expanded health coverage.

The stories gathered from these Georgians in combination with data collected from the experiences of other states have informed a set of principles shared by GHF and a coalition of dozens of other patient and consumer advocacy groups. These principles articulate that any 1115 waiver that aims to expand coverage to low-income Georgians should:

1. Put a health insurance card in the pocket of more Georgians without delay.
2. Extend coverage to all Georgians with incomes up to 138% of the federal poverty line.
3. Provide access to comprehensive health care services for newly eligible Georgians.
4. Facilitate and maintain stable, affordable coverage for newly eligible Georgians.
5. Provide comprehensive benefits to newly eligible Georgians and preserve coverage for Georgians currently enrolled.

Unfortunately, the Georgia Pathways waiver application violates all of these principles.

Georgians for a Healthy Future would like to specifically convey the following concerns with Georgia’s waiver application.

### **1. Fewer Georgians would be covered at a greater expense to state taxpayers.**

The Georgia Pathways waiver, per the constraints of its authorizing legislation, would expand coverage to Georgia adults only up to 100% FPL, rather than 138% FPL as permitted by the Affordable Care Act (ACA).

The state’s self-imposed constraint limits the number of Georgians who would be newly-eligible for coverage to an estimated 267,000 uninsured Georgians with incomes below the poverty line.<sup>1</sup> However, by the state’s own estimates, only 52,509 of these Georgians will be able to successfully navigate the complex prerequisites for coverage in order to enroll.

Georgia’s choice to cover fewer state residents will require the state to pay its standard match rate of 33% for costs associated with the newly eligible adult population. Under the ACA’s enhanced match, Georgia would only ever pay 10% of costs, a rate three times lower than the rate the state is planning to pay under the proposed waiver.

The state could spend three times less per capita to cover 450,000 more Georgians and yet chooses not to do so. The waiver application does not attempt to address this choice and does not address how the proposal will promote coverage while leaving behind thousands of otherwise eligible Georgians.

### **2. The waiver application does not advance the purpose of Medicaid: covering the cost of medical care for low income people.**

Congress appropriates Medicaid funds to the states in order to “furnish ... medical assistance [to] individuals whose income and resources are insufficient to meet the costs of necessary medical services...”<sup>2</sup> However, Georgia’s waiver application “focuses on encouraging and incentivizing work and other employment-related activities” in order to “improve ... overall health and well-being.”<sup>3</sup> Federal judges have already rejected this attempt to rewrite federal law and Georgia’s attempt is no different.

Even if the proposed waiver’s focus on employment was legally permissible, the application’s reasoning to support its proposed work requirement is flawed. The proposal won’t achieve its stated goal of improving well-being by “encouraging and incentivizing work” because most people who can work already do. Nationally more

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<sup>1</sup>Kaiser Family Foundation, 2019. *The Coverage Gap: Uninsured Poor Adults in states that Did Not Expand Medicaid.*

<sup>2</sup> 42 USC § 1396-1

<sup>3</sup> Waiver application at 2

than 6 in 10 adults with Medicaid work, and most work full time.<sup>4</sup> This holds true, even in Georgia where almost 60% of adults with Medicaid coverage work and where the state's own estimates indicate that 60% of uninsured Georgians work.<sup>5</sup> The largest barriers to working that adults with Medicaid report are illness or disability; the waiver is silent as to how the work requirement will help this group overcome their health barriers to employment. In contrast, were Georgia to expand Medicaid to people with chronic health conditions like diabetes, asthma, mental health and gastrointestinal disorders, they might be better equipped to manage their health and go to work.

Full Medicaid expansion, in contrast, would achieve higher employment rates for more people at a reduced cost to the state. Full Medicaid expansion improves workforce participation amongst individuals with disabilities and “large percentages of expansion beneficiaries reported that Medicaid enrollment made it easier to seek employment...or continue working.”<sup>6</sup>

The waiver's evidentiary support for its hypothesis that making work a precondition for Medicaid will improve health relies on misreading medical literature. For example, the waiver proposal cites an article by Pinto et al to support the statement that “[e]mployed individuals are both physically and mentally healthier than those who are unemployed.”<sup>7</sup> In fact, Dr. Pinto's team reviewed the medical literature and found five qualities of interventions successful in helping patients achieve employment: “a multidisciplinary intervention team with open communication to address patient needs”; “a package of services including expert advice, a job search, feedback, networking, education and training and peer mentorship”; “services are one-on-one and tailored”; “services are holistic and take a comprehensive view of social needs”; and “intervention team works with and engages employers.” Not one of the qualities of programs that successfully help patients gain employment in anyway resembles a work requirement.

Similarly, the waiver application's stated goal of improving well-being would be better served by expanding health coverage to all low-income Georgians. A literature review by the Kaiser Family Foundation found that “a growing body of research has found an association between Medicaid expansion and improvements in certain measures of health outcomes.”<sup>8</sup> As an example, one study indicates that expansion may contribute to reductions in infant mortality rates particularly among African Americans. This health improvement related to full Medicaid expansion would be especially beneficial here in Georgia which has a higher infant mortality rate than 43 other states.

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<sup>4</sup> Kaiser Family Foundation, 2019. *Understanding the Intersection of Medicaid and Work: What Does the Data Say?*

<sup>5</sup> Waiver application at 4

<sup>6</sup> Kaiser Family Foundation, *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review*. Aug. 15, 2019

<sup>7</sup> Waiver application at 3

<sup>8</sup> KFF, *Effects of Medicaid Expansion*, 2019

### **3. The waiver application ignores the true barriers to health and health care for low-income Georgians.**

The state's waiver application asserts without basis that "private market policies...such as premiums, copayments, Member Rewards Accounts, and prospective Medicaid eligibility," will "empower members to make cost-conscious healthcare decisions and take responsibility for improving their health," and "better prepare members for their transition into the commercial health insurance market."<sup>9</sup>

However, the waiver proposal cites no evidence—and no evidence appears to exist—that low-income Georgians do not already "take responsibility" for improving their own health. Instead, many structural factors weigh against the improved health of all low-income people, even those who work and "take responsibility" for their own health. Most of those structural factors, including higher exposure to violence, lack of affordable housing, limited economic mobility, and under-resourced schools are our collective responsibilities. For an excellent discussion of the impact of social factors on health, those reviewing these comments should read "Health, Income, & Poverty: Where We Are & What Could Help," by Khullar and Chokshi and published October 4, 2018 in *Health Affairs*. They will note that work reporting requirements for Medicaid are not mentioned in the recommendations for improving the health of the working poor.

The waiver's own provisions belie the notion that the waiver is designed to promote empowerment or individual decision making about health. The waiver proposal requests that CMS waive the "Freedom of Choice," promised to Medicaid recipients in order to "enable Georgia to restrict the freedom of choice of providers for the Demonstration eligibility groups."<sup>10</sup> Similarly, the waiver proposes that "members with access to ESI (employer sponsored insurance) must enroll in HIPP (Health Insurance Premium Payment Program) if it is cost-effective for the state," despite the fact that "no wraparound benefits will be provided to Georgia Pathways members enrolled in HIPP."<sup>11</sup> This provision appears to abolish a consumer's ability to choose the plan that costs them the same amount but provides better benefits (i.e. Medicaid) over the one provided by their employer. It is difficult to understand how this provision is consistent with the stated aims of the waiver application.

### **4. The elimination of the non-emergency medical transportation benefits restricts access to care for low-income Georgians.**

Non-emergency medical transportation (NEMT) ensures that consumers who lack transportation can still get to and from health appointments. Without access to reliable transportation, Medicaid members, especially those with chronic or complex health and

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<sup>9</sup> Waiver application at 2

<sup>10</sup> Waiver application at 22

<sup>11</sup> Waiver application at 11

social needs, regularly miss health appointments. This predictably results in worsening health, emergency room visits, and expensive inpatient hospitalizations.

A study of NEMT and health care access found that NEMT benefits are cost-effective or cost-saving for all 12 medical conditions analyzed, such as prenatal care, asthma, heart disease and diabetes.<sup>12</sup> Another study found that NEMT more than pays for itself for people with chronic conditions “resulting in a total positive return on investment of over \$40 million per month per 30,000 Medicaid beneficiaries.”<sup>13</sup> This data suggests that rather than saving money by eliminating the NEMT benefit, Georgia would instead end up spending more over time.

Further, the decision to eliminate NEMT would have a disproportionate impact on certain groups of newly eligible Georgians, limiting their access to care and forcing them to rely on unsafe or expensive modes of transportation to get to health services. People of color in Georgia are three times less likely to own a car than white Georgians, putting them at greater risk of being unable to access care without NEMT.<sup>14</sup> People living in rural Georgia counties, almost all of which are considered health transportation shortage areas, would also experience greater harm from the elimination of NEMT benefits as they have reduced access to public transportation and greater distances to travel to access services.<sup>15</sup>

## **5. The elimination of presumptive eligibility and retroactive coverage harms consumers and providers.**

Under Georgia’s proposal, individuals’ Medicaid coverage would begin on the first day of the month after their enrollment application is approved and they have paid their first month’s premium, if applicable.

Medicaid is the only type of health insurance that requires annual documentation for redetermination of eligibility. This process can result in many people briefly losing Medicaid coverage until they resolve documentation or mailing address issues, often referred to as “churn.” Percentages of people churning on and off Medicaid at renewal generally range from 25 to 50 percent. Retroactive coverage helps to fill these gaps in coverage.

Omitting this coverage will increase medical debt for Medicaid eligible individuals, as well as uncompensated care costs for the state’s health care providers. Data from

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<sup>12</sup> National Academies of Sciences, Engineering, and Medicine, 2005. *Cost-Benefit Analysis of Providing Non-Emergency Medical Transportation*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/22055>.

<sup>13</sup> Medical Transportation Access Coalition, *NEMT ROI Study*. Available at <https://mtaccoalition.org/wp-content/uploads/2018/07/NEMT-ROI-Methodology-Paper.pdf>

<sup>14</sup> National Equity Atlas. *Percent of households without a vehicle by race/ethnicity*: United states vs. GA, 2015.

<sup>15</sup> Georgians for a Healthy Future, 2019. Analysis of county-level data using the Health Transportation Shortage Index. Data and results available upon request.

Indiana indicate that 13.9 percent of affected Medicaid members had incurred costs during the retroactive eligibility period, averaging \$1,561 per person. Similarly, data from New Hampshire showed that in a 16-month period, 10 percent of the Medicaid expansion population benefited from retroactive coverage, which paid for more than \$5 million in medical expenses.

Currently, under federal law hospital staff can make a preliminary eligibility determination for uninsured patients that need care, after which the state performs the full eligibility determination. Presumptive eligibility helps patients get health care as soon as they arrive at the hospital and ensures that doctors and hospitals are reimbursed for that care. By waiving presumptive eligibility, Georgia would create additional barriers for uninsured patients who receive care at hospitals.

Because Georgia plans to waive presumptive and retroactive eligibility for newly eligible adults, uninsured patients who visit the hospital will be responsible for the entire cost of their care, even if they could have been determined eligible during their visit or retroactively after receiving care. A waiver of both retroactive and presumptive eligibility eliminates a vital pathway for uninsured Georgians to avoid crippling financial liabilities and for providers to be reimbursed after caring for low-income, uninsured patients.

## **6. The proposed waiver creates massive, expensive and duplicative government bureaucracy.**

The waiver proposal, if implemented, would require the creation of massive new state government bureaucracies but provides no estimate for the costs of these new systems and programs. The state would have to develop new information and staffing systems for reviewing the work or work-related activities of applicants, a new member account system, a healthy behavior incentive program and an employer premium assistance program. This runs contrary to the principle of efficient government enshrined in Georgia's Administrative Procedure Act which requires that "[i]n the formulation and adoption of any rule, an agency shall choose an alternative that does not impose excessive regulatory costs on any regulated person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the statutes which are the basis of the proposed rule."<sup>16</sup> It is hard to imagine a rule that would impose more regulatory costs on working poor Georgians than this proposal.

If Georgia plans to use existing information and staffing systems (e.g. Georgia Gateway) to manage these new functions, this would be cause for even greater concern. Georgia Gateway and the supporting agency functions are not robust enough at this time to handle the influx of data and information needed to manage the intricacies of the proposed waiver. Further, Georgia already has one of the slowest times for approving Medicaid MAGI and CHIP Applications according to CMS's

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<sup>16</sup> Ga. Code Ann. § 50-13-4(a)(4).

Medicaid MAGI and CHIP Application Processing Time Report from November 9, 2019. Without significant investment from the state, it is unlikely that the implementation of this waiver could take place with the resources currently available.

In a recent study, the GAO found that the administrative costs to implement work reporting requirements in other states ranged from \$6.1 to \$271.6 million dollars.<sup>17</sup> Should CMS should follow GAO's recommendation and require Georgia to "submit projections of administrative costs," the proposed waiver will likely not prove budget neutral for the federal government because of these added costs.

## **7. Georgia children and rural hospitals will continue to struggle under the proposed waiver.**

According to the Georgetown Center for Children and Families, 217,000 children in Georgia were uninsured in 2018, 38,000 more than in 2016. That is more than 8% of all children in the state and puts Georgia 48<sup>th</sup> amongst states in providing health insurance to children. Georgia's continued refusal to extend health coverage to all low-income adults, including parents, contributes to this shameful outcome, because "it is well established that when states offer coverage to the whole family, children are more likely to be enrolled."<sup>18</sup> One of the most effective strategies Georgia could take to increase health coverage for children in our state would be to ensure all parents, regardless of income, have coverage themselves.<sup>19</sup>

Similarly, the proposed waiver does not go far enough to relieve the burden of rural hospitals in providing high levels of uncompensated care. Without a more extensive coverage expansion, Georgia's rural hospitals will continue to struggle and close as they have in recent years. According to the KFF literature review, "a study published in January 2018 found that Medicaid expansion was associated with improved hospital financial performance and significant reductions in the probability of hospital closure, especially in rural areas."<sup>20</sup> Since the coverage provided under the proposed waiver will not cover the vast majority of low income people, will not cover any expenses retroactively and will not provide coverage until the first day of the month after an applicant pays the first premium, rural hospitals will likely continue to languish while

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<sup>17</sup> United States Government Accountability Office, Medicaid Demonstrations: Actions Needed to Address Weaknesses in Oversight of Costs to Administer Work Requirements, October 2019

<sup>18</sup> Joan Alker and Lauren Roygardner. *The Number of Uninsured Children is on the Rise*. Georgetown University Health Policy Institute, Center for Children and Families.

<sup>19</sup> Karyn Schwartz, *Spotlight on Uninsured Parents: How a Lack of Coverage Affects Parents and Their Families*, Kaiser Commission on Medicaid and the Uninsured, June 2007; Center for Children and Families, *Medicaid Expansion: Good for Parents and Children*, Georgetown University Health Policy Institute, January 2014; Martha Heberlein et. al., *Medicaid Coverage for Parents under the Affordable Care Act*, Center for Children and Families, Georgetown University Health Policy Institute, June 2012; and Leighton Ku and Matthew Broaddus, *Coverage of Parents Helps Children, Too*, Center on Budget and Policy Priorities, October 2006.

<sup>20</sup> KFF, *Effects of Medicaid Expansion*, 2019

federal dollars go unspent in Georgia. As rural hospitals decline, so do rural communities and the health care consumers that live in them.

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GHF believes that it is possible for all Georgians, regardless of income, to have affordable, comprehensive coverage in a way that is financially sustainable for the state and federal governments. Instead a plan that moves Georgia in that direction, the state has proposed a limited, legally dubious waiver proposal that does little to provide a meaningful pathway to comprehensive coverage for low-income Georgians.

We encourage the reviewers of this proposal to work with Georgia leaders to craft a waiver that extends coverage to all low-income Georgians.

Thank you in advance for your consideration of our comments on Georgia's 1115 Medicaid waiver application. Thank you also to Margaret Middleton, Assistant Clinical Professor of Law at Georgia State University College of Law for contributing to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Colbert', written in a cursive style.

Laura Colbert  
Executive Director  
Georgians for a Healthy Future