SPLC Southern Poverty Law Center

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February 7, 2020

The Honorable Alex M. Azar II, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20202

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

Mr. Calder Lynch, Acting Deputy Administrator & Director
Center for Medicaid & CHIP Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Comment on Georgia's Proposed Section 1115 Demonstration Waiver

Dear Secretary Azar, Administrator Verma, and Director Lynch:

The Southern Poverty Law Center (SPLC) writes regarding the Georgia Department of Community Health's (DCH) proposed Georgia Pathways to Coverage Section 1115 Demonstration Waiver.[1] We previously submitted a comment on the State's initial proposed Section 1115 waiver during Georgia's state notice and comment period. We appreciate this opportunity to again comment on Georgia's Section 1115 waiver proposal, which will negatively affect the daily lives of thousands of Georgians if it is approved.

The SPLC is a non-profit legal organization with offices in Georgia and other states across the Deep South. For over four decades, the SPLC has sought justice for, and represented the needs of, the most vulnerable members of our society, particularly communities of color who are punished or penalized for their economic status. The SPLC is committed to ensuring that low-income people across America have access to health coverage and care. With this commitment, and for the reasons explained below, the SPLC respectfully urges the Department of Health and Human Services, the Centers for Medicare & Medicaid Services, and the Center

Georgia's Section 1115 waiver proposal does not depart in any significant way from the draft waiver application submitted for the state public notice and comment period. Though the State made two changes to this draft proposal in response to the public comments from the state comment period, those changes were minor and non-substantive.[2] Thus, the revised waiver pending before HHS and CMS suffers from the same deficiencies of the draft waiver application, which are further detailed below. Georgia's failure to meaningfully address the public's concerns leaves the State's proposed waiver even more vulnerable to legal attack.

The core purpose of Medicaid is to provide health insurance to our most vulnerable members of society. The Medicaid program was created because leaders across the United

In addition to reducing access to Medicaid through burdensome requirements, the proposed waiver's expansion—which limits the extension of Medicaid coverage to parents, caretakers, or guardians with household incomes from 35 to 100% of the federal poverty line and adults without dependent children with household incomes up to 100% of the federal poverty line—does not go far enough to reach other low-income populations in Georgia.[8] Accordingly, as detailed below, the proposed Section 1115 waiver does not meaningfully expand Medicaid access to the hundreds of thousands of Georgians who currently live without health care coverage.

Work requirements, monthly premiums, payments, and cancellation of NEMT are inconsistent with the purposes of the Medicaid Act and the stated objectives of the Section 1115 waiver

Georgia's Section 1115 waiver does not meaningfully advance the primary goal of the Medicaid = ⍓ † ⍰ up

The proposed Section 1115 waiver is also inconsistent with its own stated goals and objectives. Georgia's waiver proposal lists among its objectives "support[ing] Georgians on their journey to self-sufficiency," "reduc[ing] the number of uninsured," and "[i]mprov[ing] the health of low-income Georgians by increasing their access to affordable healthcare coverage by encouraging work and other employment-related activities." Section 1115 Waiver Appl. at 2–3. However, conditioning Medicaid eligibility upon work and the payment of premiums and copayments lacks empirical support and defies logic. Studies have shown that mandated work programs have actually worsened health outcomes, failed to increase long-term employment, and failed to reduce poverty.[12] An analysis of other public benefit assistance programs that imposed work requirements on recipients has shown only modest increases in employment at the outset of the requirement that have decreased over time.[13] Moreover, far from leading to self-sufficiency, the vast majority of people subjected to work requirements in other assistance programs have not escaped poverty, and some have fallen deeper into poverty.[14]

Conversely, studies have shown that access to healthcare through Medicaid enrollment increases the likelihood that an individual will obtain employment. In Ohio, for example, Medicaid recipients enrolled in Medicaid expansion reported that having coverage made it easier for them to maintain their employment, and among those recipients who were unemployed, nearly 75% reported that having Medicaid coverage made it easier to look for employment.[15] Health coverage also makes it easier for families to buy food, pay housing costs, and pay off existing debts.[16] People simply cannot work if their basic needs are not met

afford it. Indeed, similar proposals by other states have been struck down for the failure to consider impacts on coverage and possible disenrollment.[36]

- **The proposal does not provide for exemptions from the work and activities requirement for people who are chronically ill or otherwise unable to work or engage in employment-related activities for 80 hours per month.** The proposal recognizes "temporary" impediments to compliance with the work and activities requirement, such as family emergencies or "other life changing event[s]," the birth or death of a family members, serious illness or hospitalization, severe weather, homelessness, and other "good cause reasons" approved by the State. Section 1115 Waiver Appl. at 10. However, it does not explain whether exemptions will be made for individuals who cannot meet the requirement due to chronic conditions or other long-term factors rendering them unable to satisfy the 80-hour requirement. Those individuals will face particularly severe burdens in meeting these requirements, yet the waiver proposal offers them no additional support or resources. The proposal is also silent about whether and how recipients could challenge their suspension or disenrollment from Medicaid for failure to comply with the work and activities requirement due to a chronic medical condition.

- **The proposal does not provide for exemptions from payment of the monthly premium for people with chronic illnesses or others who are simply unable to pay.** The proposal provides several exceptions to the requirement that individuals must pay "sliding scale flat rate monthly premium payments tiered based on family income." Section 1115 Waiver Appl. at 13. However, the proposal does not explain whether exemptions will be made for those who cannot make their monthly payments due to chronic illness or other factors. Nor does it explain whether it will allow enrolled individuals to show good cause for their inability to pay before their enrollment is suspended or terminated. The proposal is also silent about whether and how recipients could challenge their suspension or disenrollment from Medicaid for failure to pay a monthly premium.

- **The proposal ignores the impact of parental and caretaker health coverage on children.** The health and stability of children largely depends on the health and stability of their parents and caretakers. In recent years, as several states have moved to expand Medicaid under the ACA, the impacts have not only been felt by newly eligible adults, but also by their children, because children with insured parents are more likely to receive pediatric care and preventive services.[37] As parents lose coverage, their children are also less likely to be enrolled in healthcare plans and to receive healthcare, even if the child remains eligible for Medicaid and CHIP.[38] Taking away parents' and caretakers' health insurance leads to financial instability and distress for the whole family, creating a greater risk to children's health.[39] If the real intent of the proposal is to make families healthier, Georgia must consider the impacts that losing parental and caretaker coverage will have on the entire family.

- **The proposal does not account for Georgians' inability to report compliance with the work requirements.** The proposal purports to create a new eligibility pathway for those who can demonstrate an hours and activities threshold of 80 hours per month of engagement in a qualifying activity, such as work, job training, enrollment in higher

education, or community service. Georgia's proposal will permit recipients to report their hours online as well as in person. But in Georgia, over 25% of Georgian households lack broadband internet service.[40] Additionally, the transportation shortage in many of Georgia's counties will hinder Georgians' ability to report in person.[41] Thus, many low-income families will struggle to comply with the reporting requirements, even if they are compliant with the work requirement, simply because they lack reliable internet access and transportation.

- **The proposal is modeled after commercial healthcare plans and does not grant recipients the full array of services available under the Medicaid State Plan.** The proposal states that it seeks "to provide a benefit package more consistent with commercial plan benefits" by requesting a waiver for certain services, including NEMT and certain vision and dental services for 19 and 20-year-olds. Section 1115 Waiver Appl. at 11. The proposal does not explain why recipients enrolled pursuant to the Section 1115 waiver will not have access to the full range of benefits provided under the Medicaid State Plan, including NEMT. Nor does it explain its rationale for modeling Medicaid after commercial plans or how doing so will advance Medicaid's goal of providing healthcare to the country's most vulnerable families and individuals.

- **The proposal eliminates retroactive coverage, undermining the goals of Medicaid.** The proposal seeks a waiver of the requirement of providing three months retroactive coverage "[t]o better align with commercial health insurance coverage." Section 1115 Waiver Appl. at 10. However, the proposal's alignment with commercial plans does nothing to advance Medicaid's objective of expanding access to health care. Nor does the proposal consider that waiving retroactive coverage will create gaps in coverage and reduce access to Medicaid services by weakening the network of providers serving enrollees. As with Arkansas's similar waiver, Georgia's proposal to "limit[] retroactive coverage may lead 'Medicaid-eligible persons [to] wait even longer to have their conditions treated to avoid incurring medical bills they cannot pay.' And when they do eventually arrive for treatment, they will be covered for less time than they would have been before [the waiver] t[a]k[es] effect. . . , by definition reducing their Medicaid coverage."[42] This undermines Medicaid's most fundamental goals of extending coverage to the nation's poorest people and improving health outcomes.

- **The proposal is silent on the costs of administering and monitoring compliance with the work requirements.** Even though Georgia does not provide any estimates on administrative costs, one can look at other states, such as Kentucky, Tennessee, and Virginia, to gather a sense of just how much this proposal will cost Georgia. Kentucky projected that enacting work requirements would cost the state more money to cover fewer people.[43] To administer the work requirements and monitor compliance, states must develop new programming and infrastructure and hire additional staff, costing taxpayers tens of millions of dollars.[44] These substantial expenses will have particularly negative consequences for participants in Georgia's Medicaid program, which ham l T Ã a

needlessly costly, thus undercutting the State's supposed ratio

Thank you again for the opportunity to comment on this issue.

Sincerely,

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Anjana Joshi
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Deputy Legal Director

The Southern Poverty Law Center

[1] Although DCH has proposed the Section 1115 waiver in conjunction with the Georgia Access Section 1332 Waiver, we do not write regarding the 1332 waiver at this time.

[2] Those changes solely included the elimination of all references to the Transitional Medical Assistance population and clarification of the enrollment commitment for higher education as a qualifying activity to receive Medicaid coverage. Section 1115 Waiver Appl. at 32-33.

[3] Congress passed Medicaid "[f]or the purpose of enabling each State, as far as practicable . . . to furnish (1) medical assistance on behalf of" families and individuals "whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care." 42 U.S.C. § 1396-1.

[4] Georgia Budget and Policy Institute, Medicaid Works for Georgia 1-2 (2017), https://cdn.gbpi.org/wp-content/uploads/2017/04/Medicaid-Works-for-Georgia.pdf.

[5] Georgia Department of Audits and Accounts, Fiscal Note on HB 37 (LC 46 0015) (2019), accessible at https://opb.georgia.gov/fiscal-notes/2019-2020-regular-session.

[6] Kaiser Family Foundation, Medicaid in Georgia (2019), http://files.kff.org/attachment/fact-sheet-medicaid-state-GA.

[7] Laura Harker, Georgia Budget and Policy Institute, Fast Facts on Georgia's Coverage Gap (2018), https://gbpi.org/2018/fast-facts-georgias-coverage-gap/.

[8] While the State says it cannot fully expand Medicaid because the Patients First Act only permits expansion up to 100% of the federal poverty line (FPL), Section 1115 Waiver Appl. at 27, Georgia could follow the lead of many other states that have enacted legislation to require full expansion for coverage up to 138% of the FPL under the Affordable Care Act, Kaiser Family Foundation,

[29] Harker, *supra* note 7.
[30] Laura Harker, Georgia Budget and Policy Institute, *State Health Care Proposals Fall Short and Undermine Comprehensive Health Plans* 7 (2019), https://gbpi.org/wp-content/uploads/2019/11/GBPI-Analysis-of-Proposed-1115-and-1332-Waivers.pdf.
[31] Jim Galloway, Tia Mitchell, Greg Bluestein, & Tamar Hallerman, The Atlanta Journal-Constitution, *The Jolt: The Quandary an Impeachment Trial Poses for Johnny Isakson—or His Replacement* (Nov. 5, 2019), https://www.ajc.com/blog/politics/the-jolt-the-quandary-impeachment-trial-poses-for-johnny-isakson-his-replacement/sNIwCchpsBAhwwMeLKy2aM/.
[32] Jennifer Rainey Marquez, Atlanta Magazine, *In Much of Rural Georgia, Maternal Healthcare is Disappearing* (July 12, 2017), https://www.atlantamagazine.com/health/rural-georgia-maternal-healthcare-disappearing-joy-baker/.
[33] Suzie Edrington, Linda Cherrington, et al., Transporation Research Board of the National Academies, *State-by-State Profiles for Examining the Effects of Non-Emergency Medical Transportation Brokerages on Transportation Coordination* (2018), http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_202_companion.pdf.
[34] P. Hughes-Cromwick, R. Wallace, H. Mull, et al, Altarum Institute, *Cost Benefit Analysis of Providing Non-Emergency Medical Transportation* 4 (2005), https://altarum.org/sites/default/files/uploaded-publication-files/05_project_report_hsd_cost_benefit_analysis.pdf.
[35] Voices for Georgia's Children, *Barriers to Healthcare for Georgia's Children* 9 (2018), http://georgiavoices.org/wp-content/uploads/Healthcare-Access-Report-FINAL.pdf.
[36] *See e.g. Gresham*, 363 F. Supp. 3d at 175 (noting that HHS Secretary's failure to "offer[ ] his own estimates of coverage loss [ ]or grapple[ ] with comments in the administrative record projecting that the Amendments would lead a substantial number of Arkansas residents to be disenrolled from Medicaid" rendered waiver approval arbitrary and capricious).
[37] Maya Venkataramani, Craig Evan Pollack & Eric T. Roberts, *Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services*, Pediatrics (2017), http://pediatrics.aappublications.org/content/early/2017/11/09/peds.2017-0953 (finding that children with insured parent !

[50] Li, et al., supra note 44.
[51] Ctr. for Medicare & Medicaid Services, Dept. of Health & Human Services, Letter to State Medicaid Directors re: Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries (Jan. 11, 2018), at 7, available at https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf.