September 16, 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: StatelInnovationWaivers@cms.hhs.gov

Subject: Georgia Section 1332 Waiver Comments

Dear Secretary Azar, Secretary Mnuchin, and Administrator Verma,

Thank you for the opportunity to comment on Georgia’s proposal to waive federal rules under the Affordable Care Act (ACA). We are writing to express concern about this waiver. Under the proposal, the state would exit the federal marketplace with no substitute. This would eliminate the central source of help for the roughly 500,000 Georgians who enroll in private health plans or Medicaid through HealthCare.gov. We urge you to reject this aspect of the application and instead encourage Georgia to adopt the Medicaid Expansion to provide coverage to Georgia’s uninsured.

The Epilepsy Foundation and our local affiliate, Epilepsy Foundation Georgia, write on behalf of the 110,200 Georgians with epilepsy and their families. Epilepsy is the fourth most common neurological disorder in the United States and affects people of all ages. For the majority of people living with epilepsy, anti-seizure medications are the most common and cost-effective treatment for controlling and/or reducing seizures. It is vital for people with epilepsy to have meaningful and timely access to affordable, comprehensive coverage and physician-directed and person-centered care.

**Georgia Access Model**

Georgia’s application proposes to prohibit Georgians from choosing to enroll in coverage through the neutral Healthcare.gov platform and instead would require that people enroll directly through insurers or brokers. This policy will make it harder for people with epilepsy to enroll in comprehensive, affordable healthcare coverage. We are concerned that Georgia is proposing to replace HealthCare.gov with 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 or may not even cover the prescription medications, physician visits, and hospital stays that people with epilepsy need. We urge you not to approve this aspect of 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.

The implementation of the Affordable Care Act decreased the number of adults with active epilepsy who are uninsured. According to an analysis of the National Health Interview Survey, the percentage of adults aged 18-64...
with active epilepsy who were uninsured decreased from 17.7% in 2010 and 2013 (pre-Affordable Care Act implementation) to 7.3% in 2015 and 2017 (post-Affordable Care Act implementation). This was balanced by a similar increase in public and private insurance coverage.\textsuperscript{v} We are concerned that adoption of the Georgia Access Model would reverse this trend in Georgia.

**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 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.

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.\textsuperscript{vi} Without HealthCare.gov, people who are eligible for Medicaid could have a much harder time finding help with enrollment because Medicaid 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. Medicaid provides comprehensive coverage of prescription medications with low or no cost-sharing. It is essential that low-income people with epilepsy who are eligible enroll in Medicaid instead of higher cost alternatives so that they can adhere to their medication regime.

Georgia’s waiver proposes that substandard plans, such as short-term plans that may not cover the prescriptions and other care that people with epilepsy need, 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.\textsuperscript{vii} People enrolled in subpar plans are subject to 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 medications, mental health services, or maternity services, had pre-existing condition exclusions, and had a deductible three times as high as an ACA-compliant plan.\textsuperscript{vii}

**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 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. We encourage Georgia to move forward with this proposal while dropping the harmful components of the waiver.

Medicaid expansion also 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. It should do so, rather than upending the state’s insurance market at great risk to consumers.

Thank you for the opportunity to comment on this waiver. We urge you to reject the Georgia Access Model.

Sincerely,

Laura Thrall
President & CEO
Epilepsy Foundation

Aly Clift
Executive Director
Epilepsy Foundation of Georgia


