Georgetown University
Health Policy Institute
CENTER FOR CHILDREN
AND FAMILIES

February 7, 2020

VIA ELECTRONIC SUBMISSION

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

RE: Georgia Pathways Section 1115 Demonstration Waiver Application

Dear Secretary Azar:

Thank you for the opportunity to comment on Georgia's "Pathways to Coverage" Section 1115 demonstration application. The Georgetown University Center for Children and Families (CCF) is an independent, nonpartisan policy and research center founded in 2005. As part of the McCourt School of Public Policy, Georgetown CCF conducts research, develops strategies, and offer solutions to improve the health of America's children and families, especially those with low and moderate incomes.

By letter dated today, CCF joins with 13 other organizations in requesting that you reject Georgia's proposal because it is not likely to promote the core objective of the Medicaid program – to provide coverage. I reaffirm CCF's support for that request and the reasons set forth in that letter – i.e. the proposal falls short on coverage; the proposal does not meet the requirements of section 1115; work requirements undermine coverage; premiums decrease coverage and create additional barriers to health care; eliminating retroactive eligibility and the non-emergency medical transportation benefit will harm beneficiaries; the proposal does not adequately address Georgia's high maternal mortality rates; and the state's current HIPP program violates federal rules and thus should not be expanded.

In this letter, I want to underscore why Georgia's proposal is not approvable under section 1115, and explain how it does not address the problems currently facing Georgia's families.

Georgia's proposed demonstration is not approvable under section 1115.

Georgia is requesting approval of federal Medicaid funding for coverage of some parents and adults in poverty through the establishment of a new program, "Pathways to Coverage." The new program would have different eligibility rules, different benefits, different premium and cost-sharing requirements, and a different purpose than Medicaid. None of the different eligibility rules, benefits, or premium and cost-sharing requirements

are authorized by the Medicaid statute. The state is therefore requesting approval of this new program as a demonstration under section 1115 of the Social Security Act. The state's proposal is not approvable because section 1115 does not authorize the Secretary to use Medicaid matching funds to create and pay for a new program that is not consistent with, much less likely to promote, the objectives of the Medicaid program.

Under section 1115, in order to enable a state to conduct a demonstration, the Secretary has the authority to waive provisions of section 1902 of the Medicaid statute and to authorize federal matching funds (at a state's regular matching rate) for costs not otherwise matchable under section 1903. Regardless of the authority used, the demonstration must be "likely to assist in promoting the objectives of" the Medicaid statute. As several recent federal district court decisions have emphasized, a "core objective" of the Medicaid statute is to provide health care coverage for low-income Americans.[1] *The Georgia demonstration is not likely to promote this objective and in fact is inconsistent with it*.

Georgia is proposing to create a new program for the following adults. In the case of parents or caretaker relatives with dependent children, income would have to be between 35 percent and 100 percent of the Federal Poverty Level (FPL) ($633 to $1,810 per month for a family of three); the parent would have to demonstrate work or other qualifying activities of 80 hours per month; and, above 50 percent of FPL ($905 per month for a family of three), the parent would have to pay a premium ranging from at least $7 to $11 per month and copayments up to 3% of income. In the case of adults without dependent children, income would have to be no greater than 100 percent FPL ($1,041 per month); the individual would have to demonstrate work or other qualifying activities per month; and, above 50 percent of FPL ($520 per month), the individual would have to pay a premium ranging from at least $7 to $11 per month and copayments up to 3% of income. In either case, failure to meet the work requirements or pay the monthly premiums would disqualify a parent or childless adult from enrolling in coverage, or maintaining it, regardless of how poor they are.

Georgia could cover these parents and other adults, plus additional low-income uninsured adults with incomes up to 138 percent of FPL ($1,467 per month for an individual, $2,498 per month for a family of 3) simply by exercising its option to cover Medicaid expansion adults under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act. If it did so, the federal government would pay 90 percent of the cost of covering the expansion adults, not Georgia's regular match rate of 67 percent. Under this (VIII) group option, eligible individuals are not subject to work requirements, they are not subject to premiums under 100 percent of FPL, and they are not subject to copayments up to 3% of household income under 100 percent of FPL. They simply receive Medicaid coverage for needed hospital, physician, and other health care services. The absence of work and premium and copayment requirements, which create barriers to care, and the availability

[1] Philbrick v. Azar, Civil Action 19-773 (JEB), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2019cv0773-47.

of federal funds at a substantially enhanced federal matching rate, underscores how the Medicaid expansion option reflects and advances the "core objective" of the Medicaid program: coverage for needy people.

Instead of taking up the option authorized under the Medicaid statute to cover low-income parents and adults not currently eligible for Medicaid, Georgia is proposing a new program that: (1) is limited to individuals with incomes below 100 percent of FPL who meet work requirements at the time of application (and thereafter); and (2) "embrace[s] private market policies and principles, such as premiums, copayments, Member Rewards Accounts, and prospective Medicaid eligibility….[that] "are fundamental components of a commercial health insurance plan." The state believes that this new program will "help better prepare members for their transition in the commercial health insurance market." (p. 2).

Medicaid is not a commercial health insurance program; it is a publicly funded health insurance program for low-income Americans for whom commercial health insurance policies and principles, such as premiums and copayments at 50 percent of poverty, simply do not work. Preparing beneficiaries for "transition to the commercial health insurance market" is not an objective of Medicaid. Rather than creating a new and different program, that is inadequate in many ways, there is a straightforward way for Georgia to provide coverage – which is to take up the statutorily-authorized Medicaid expansion with 90 percent federal funding. Over 300 studies have shown the positive effects of Medicaid expansion on uninsured rates, access to care, state budgets, and financial stability for beneficiaries among many others.[2]

Relative to the coverage available under the Medicaid expansion—the gold standard for coverage under the Medicaid program already adopted by 37 states[3]—the Georgia "Pathways" program will result in coverage loss. Experience in Arkansas shows unequivocally that work requirements and associated red tape will result in coverage loss;[4] in the case of the "Pathways" program, these requirements will keep many poor Georgians, even those in deep poverty, from qualifying to enroll at all. And the private market policies and principles, notably monthly premiums at 50 percent of FPL, will result in further coverage losses, even by those enrollees who manage to meet the work requirements.[5]

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[2] Larisa Antonisse *et al.,* "The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review," Kaiser Family Foundation, August 2019, https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-august-2019/.

[3] Status of State Medicaid Expansion Decisions: Interactive Map, Kaiser Family Foundation, January 2020, https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/.

[4] Benjamin D. Sommers *et al.,* "Medicaid Work Requirements - Results from the First Year in Arkansas," *The New England Journal of Medicine,* September 12, 2019, https://www.nejm.org/doi/full/10.1056/NEJMsr1901772.

[5] The Lewin Group, "Healthy Indiana Plan 2.0: POWER Account Contribution Assessment," March 31 2017, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/Healthy-Indiana-Plan-2/in-healthy-indiana-plan-support-20-POWER-acct-cont-assesmnt-03312017.pdf.

These coverage loss effects are well known and not disputed; there is no need for yet another demonstration of work requirements or premiums.

The state estimates that enrollment under the "Pathways" proposal would be 52,500 in the fifth year of the demonstration (Table 6.0). Its proposal does not provide an estimate of how many Georgians would be covered if the state took up the Medicaid expansion instead. The state's Department of Audits and Accounts, however, estimated that between 487,000 and 598,000 Georgians would gain coverage through Medicaid expansion.[6] In other words, the state's proposal would cover hundreds of thousands fewer adults than the expansion option available to it under the Medicaid statute, effectively reducing coverage.

Not only would the state's proposal reduce coverage relative to the Medicaid expansion option; it would do so by establishing a new program that uses eligibility rules and commercial insurance policies and principles that are not authorized under the Medicaid program and unworkable for low-income adults. Use of section 1115(a) (2) expenditure authority to create and fund this new program would not be "likely to promote the objectives of" the Medicaid program, both because it would reduce coverage relative to the Medicaid expansion, and because the purpose of the new program—"to better prepare members for their transition into the commercial health insurance market"—is simply not an objective of the Medicaid program. The state's proposal is not approvable under section 1115.

The state's request to expand its HIPP program should be denied because the program is already operating in a way that violates federal rules.

Under the proposal, newly eligible adults would be required to enroll in available employer-sponsored insurance (ESI) that is offered to them if that coverage is determined to be cost effective for the state.[7] Enrollment in ESI would occur through the state's existing Health Insurance Premium Payment (HIPP) program. The state says that it will pay coinsurance and deductibles for these new beneficiaries enrolled in the mandatory HIPP program (pg. 30).

As the state notes in p. 12 of its application, Georgia's current HIPP program operates under state plan authority, which arises from Section 1906a of the Medicaid statute. Current enrollees in Georgia's HIPP program include families where any member, including a child, is Medicaid eligible. Section 1906(a)(3) requires that participants receive all benefits and cost-sharing protections, including "all deductibles, coinsurance and other cost-sharing obligations" that would be afforded to them under Medicaid state plan coverage. In the case of children, as you know, these cost-sharing protections are virtually

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[6] Department of Audits and Accounts, "Fiscal Note (LC 46 0015)," January 18, 2019, https://opb.georgia.gov/document/fiscal-notes-2019-health-and-human-services/lc-46-0015-medicaid-expansion-hb-37/download.

[7] It is worth noting that "cost-effective" in this context, according to the state, refers to cost savings for the state and federal governments of a minimum of one dollar.

absolute and prohibit coinsurance and deductibles for all mandatory coverage categories.[8] However, Georgia's Medicaid agency website providing information to beneficiaries about its HIPP program currently states that "HIPP does not pay coinsurance and deductibles".[9] This is repeated in the demonstration request (p. 12).

The state's request to incorporate its current HIPP program into its new "Pathways" program should be disapproved. Instead, the Secretary should instruct CMS to ensure that Georgia brings its current HIPP program into compliance with federal law by paying for cost-sharing imposed on low-income families who are covered through their employer's insurance that they would not be required to pay under Medicaid.

Georgia's proposal does not address the problems currently facing Georgia families.

Georgia currently has over 660,000 uninsured adults living at or below 138 percent of FPL[10] and over the past two years has seen an increase in the number of uninsured children. Between 2016 and 2018, an additional 38,000 children in Georgia became uninsured (an increase of over 20 percent);[11] almost 8,000 of these were children under 6.[12] The state is also facing a maternal mortality crisis that disproportionately affects African-American women. Between 2012 and 2014, there were 101 pregnancy-related deaths in Georgia; of these, 60 percent were among Black, non-Hispanic women, making them over three times more likely to die from pregnancy-related causes as White, non-Hispanic women.[13] Georgia's proposal does not address either of these problems.

The new "Pathways" program would establish severe barriers to obtaining coverage for parents who, like childless adults, would have to meet 80 hours of work or qualified activities a month in order to qualify for coverage. Unlike single adults, however, parents have child care responsibilities. The proposal excludes child caregiving as a qualifying activity; this means that parents will have to find care for their children while they are working. The costs of child care are often cost-prohibitive for low-income families. The average cost of child care for a school-age child in 2014 was $4,100 per school year (20 percent of income for a family of three); parents of young children face even higher child care costs, between $7,500 and $10,200 depending on the age of the child and type of

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[8] Centers for Medicare and Medicaid Services, "Cost Sharing," accessed on January 23, 2020, https://www.medicaid.gov/medicaid/cost-sharing/index.html.
[9] Georgia Medicaid, "Health Insurance Premium Payment Program (HIPP)," accessed on January 23, 2020, https://medicaid.gex`orgia.gov/third-party-liability/health-insurance-premium-payment-program-hipp.
[10] Georgia Department of Community Health Waiver Project, "Georgia Environmental Scan Report," July 8, 2019, https://medicaid.georgia.gov/document/publication/georgia-environmental-scan-report-posted-71819/download
[11] Joan Alker and Lauren Roygardner, "The Number of Uninsured Children is On the Rise," Georgetown Center for Children and Families, October 2019, https://ccf.georgetown.edu/wp-content/uploads/2019/10/Uninsured-Kids-Report.pdf.
[12] Elisabeth Wright Burak, Maggie Clark, and Lauren Roygardner, "Nation's Youngest Children Lose Health Coverage at an Alarming Rate," Georgetown Center for Children and Families, December 2019, https://ccf.georgetown.edu/wp-content/uploads/2019/12/Uninsured-Kids-under-6-final-1.pdf.
[13] Georgia Department of Public Health, "Maternal Mortality Report 2014," March 2019, https://dph.georgia.gov/document/publication/maternal-mortality-2014-case-review/download.

facility.[14] Child care across all ages is likely unaffordable for the parents who could potentially meet the income eligibility criteria for the new "Pathways" program (between $633 to $1,810 per month for a family of three). As a practical matter, this will prevent parents from meeting the work requirement that is a condition of eligibility, leaving them uninsured.

The inability to obtain coverage if the proposal's requirements are not met doesn't just hurt parents, but their children as well. Ample evidence has found that children are more likely to have coverage when their parents are insured.[15] Yet, the proposal does little to make it more likely for parents to receive coverage.

Additionally, the numerous restrictions Georgia is seeking to impose on women in order to obtain coverage will not improve the state's high maternal mortality rates. Under the proposal, women would only be given a "short term exception" from the work requirement after giving birth. The proposal does not specify the length of the exception but it is likely no more than 60 days postpartum, which is the current termination of coverage for pregnant women in Georgia. However, women continue to face postpartum complications after 60 days; the data show that 27 percent of pregnancy-related maternal deaths in Georgia occurred between 43 days and one year postpartum (over half of which were determined to be preventable).[16]

The American College of Obstetricians and Gynecologists (ACOG) recommends that women have access to continuous coverage, before, during, and after pregnancy, to reduce maternal mortality rates (among other positive health outcomes). If Georgia expanded Medicaid, women of reproductive age in Georgia could receive the necessary continuous coverage recommended by ACOG, and the state would likely see lower maternal mortality rates. A recent study by Harvard researchers found Medicaid expansion was associated with improved postpartum coverage and likely results in reductions in maternal mortality.[17] Other research has shown states that have not expand Medicaid have higher maternal death rates and persistent racial disparities in maternal and infant health.[18]

Both of these problems could be addressed if Georgia fully expanded Medicaid to 138 percent of FPL without a work requirement and without a premium requirement for those

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[14] Gina Adams *et al.,* "Child Care Challenges for Medicaid Work Requirements," Urban Institute, September 2019, https://www.urban.org/sites/default/files/publication/101094/medicaid_work_reqs_child_care_0.pdf.
[15] Julie L. Hudson and Asako S. Moriya, "Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children," *Health Affairs,* September 2017, https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347.
[16] Georgia Department of Public Health, "Maternal Mortality Report 2014," March 2019, https://dph.georgia.gov/document/publication/maternal-mortality-2014-case-review/download.
[17] Sarah H. Gordon *et al.,* "Effects of Medicaid Expansion on Postpartum Coverage and Outpatient Utilization," *Health Affairs*, January 2020, https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2019.00547.
[18] Adam Searing and Donna Cohen Ross, "Medicaid Expansion Fills Gaps in Maternal Health Coverage Leading to Healthier Moms and Babies," Georgetown Center for Children and Families, May 2019, https://ccf.georgetown.edu/wp-content/uploads/2019/05/Maternal-Health-3a.pdf.

with incomes as low as 50 percent of poverty. Children and their parents would benefit from expansion as it would extend coverage to thousands of additional parents, likely increase children's Medicaid enrollment through the "welcome mat effect," and would protect families from economic insecurity that can come from medical debt and bankruptcy due to lack of coverage. The new "Pathways" program is not designed to deliver such results, and it will not do so.

Our comments include citations to supporting research, including direct links to the research for HHS' benefit in reviewing our comments. We direct HHS to each of the studies cited and made available to the agency through active hyperlinks, and we request that the full text of each of the studies cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

For this and the other reasons cited above, I urge you to disapprove the proposal. Thank you for the consideration of our comments. If you need any additional information, please contact me at jca25@georgetown.edu.

Joan Alker

Research Professor, McCourt School of Public Policy, Georgetown University

Executive Director, Center for Children and Families