



January 7, 2022

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Request for Comment on the Georgia Access Model

Dear Secretary Yellen and Secretary Becerra:

Thank you for the opportunity to submit comments on the Georgia Access Model.

The undersigned organizations represent millions of individuals facing serious, acute and chronic health conditions across the country. Our organizations have a unique perspective on what patients need to prevent disease, cure illness and manage chronic health conditions. The diversity of our groups and the patients and consumers we represent enables us to draw upon a wealth of knowledge and expertise and serve as an invaluable resource regarding any decisions affecting state health insurance marketplaces

and the patients that they serve. We urge the Department of the Treasury and the Department of Health and Human Services (Departments) to make the best use of the recommendations, knowledge and experience our organizations offer here.

Our organizations are committed to ensuring that any changes to the healthcare system achieve coverage that is adequate, affordable and accessible for patients.¹ A strong, robust marketplace is essential for people with serious, acute and chronic health conditions to access comprehensive coverage at an affordable cost. Yet the Georgia Access Model would take this away. The state's plan would prohibit Georgians from choosing to enroll in coverage through Healthcare.gov and dictate instead that they use an insurer or broker. These options are already widely available to Georgians, who are free to choose them absent a waiver. The state's harmful decision to bar enrollment through Healthcare.gov was flawed to begin with, and its justifications have since been nullified by federal law and policy changes. Our organizations strongly urge the Departments to revoke the Georgia Access Model portion of the state's 1332 waiver.

Initial Approval of the Georgia Access Model Was Unlawful

Our organizations wrote in opposition to the version of the Georgia Access Model that was made available for federal public comment in August and September 2020. We noted that the state's plan would reduce enrollment in comprehensive coverage and jeopardize access to quality and affordable care for patients with preexisting conditions, in violation of the statutory waiver guardrails.² The Departments did not approve this plan. Rather, they approved a materially different version of the Georgia Access Model, one that was withheld from public view until the date the administration signed off on it.³ Once we, and the rest of the public, had the opportunity to review the previously undisclosed submission — again, only after a final decision had already been rendered — it was apparent that the state had not fixed the problems found in its earlier applications and that the approval was unlawful.

Federal Law and Policy Have Changed and the Georgia Access Model Does Not Comply with Statutory Protections

Assuming it was proper for the Departments to approve the Georgia Access Model in November 2020, based on the then-current federal coverage framework, subsequent events, including enactment of the American Rescue Plan Act, the COVID-19 Special Enrollment Period (SEP), and new federal investments in outreach and enrollment activities, require that the waiver's compliance with federal law be reassessed. These intervening changes materially affect and render unreliable the analyses on which the November 2020 approval was based. In light of these developments, our organizations understand there is a legal obligation to reexamine the state's waiver.⁴ We appreciate that the Departments are doing so

¹ Statement from the American Lung Association and Health Partners, "Consensus Health Reform Principles." September 20, 2021. Available at: <https://www.lung.org/getmedia/24309f63-74e9-4670-8014-d59f21104cfd/092021-ppc-healthcare-principles-42-logos-final.pdf>.

² Letter from the American Lung Association and Health Partners to Secretary Azar and Secretary Mnuchin re: Georgia 1332 Waiver Application. September 18, 2020. Available at: [https://www.lung.org/getmedia/d9b71de1-aa93-4a65-80b7-17ed3b17c001/health-partner-access-2-0-comments-\(final\).pdf](https://www.lung.org/getmedia/d9b71de1-aa93-4a65-80b7-17ed3b17c001/health-partner-access-2-0-comments-(final).pdf)

³ State of Georgia, Office of the Governor. *Georgia Section 1332 State Empowerment and Relief Waiver Application*. July 31, 2020. Available at: <https://medicaid.georgia.gov/document/document/modified-1332-waiver/download>

⁴ Tara Straw and Jason Levitis. "Georgia's Plan to Exit Marketplace Will Leave More People Uninsured, Should Be Revoked." Center on Budget and Policy Priorities. December 17, 2021. Available at: <https://www.cbpp.org/research/health/georgias-plan-to-exit-marketplace-will-leave-more-people-uninsured-should-be>

and that they have recognized the need for public comment as part of that process. In the comments that follow, we respectfully observe that the Georgia Access Model does not and cannot comply with federal law as it now stands and urge that it be revoked.

Impact on Coverage

Our previous comments noted numerous methodological problems with Georgia's assertion that its waiver would increase coverage, including that the state underestimated the number of individuals (8,000 people or 2% of current enrollees) who would lose coverage during the transition from Healthcare.gov. Since that time, federal policies have expanded and will likely continue to expand the number of people with coverage through Georgia's marketplace. The American Rescue Plan Act significantly expanded financial assistance for marketplace coverage. The combination of the increased subsidies and the opening of a lengthy special enrollment opportunity in response to the ongoing pandemic produced nearly 150,000 new plan selections in Georgia between February 15 and August 15 of this year.⁵ These gains, which are not reflected in Georgia's now outdated analysis, are likely to grow in the near term during an open enrollment period where more than 650,000 people have already selected a plan as of December 15 and that lasts 30 days longer than what was contemplated in the fall of 2020.⁶ What's more, this increased enrollment can be expected to be durable, even if the enhanced subsidies expire.⁷ What the enrollment boost is unlikely to withstand, however, is the implementation of the Georgia Access Model, which would abruptly fragment the market and deprive Georgians of their most commonly used pathway to individual coverage. Forced adoption of the state's plan imperils continuous coverage for the increasing number of Georgians who rely on Healthcare.gov and makes it highly likely that some of the people who purchased comprehensive marketplace coverage, including many of those who newly did so, will lose it. Coverage losses associated with the transition are thus likely to far exceed what could have been expected in November 2020 and must be newly assessed.⁸

Additionally, when the Departments originally considered Georgia's 1332 waiver, federal investments in outreach and enrollment activities were significantly lower than they are today. For example, funding for the Navigator program has increased from \$10 million when Georgia's waiver was approved to \$80 million for plan year 2022, including more than \$2.5 million for Navigator organizations in Georgia alone.⁹ This increase is in addition to significant investments in outreach and enrollment funding the

⁵ U.S. Department of Health and Human Services. *2021 Final Marketplace Special Enrollment Period Report*. 2021. Available at: <https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf>

⁶ U.S. Centers for Medicare and Medicaid Services. "Marketplace Weekly Enrollment Snapshot: Week 6." December 22, 2021. Available at: <https://www.cms.gov/newsroom/fact-sheets/marketplace-weekly-enrollment-snapshot-week-6>

⁷ Congressional Budget Office. "Reconciliation Recommendations of the House Committee on Ways and Means." February 15, 2021. Available at: <https://www.cbo.gov/publication/57005>

⁸ Tara Straw and Jason Levitis. "Georgia's Plan to Exit Marketplace Will Leave More People Uninsured, Should Be Revoked." Center on Budget and Policy Priorities. December 17, 2021. Available at: <https://www.cbpp.org/research/health/georgias-plan-to-exit-marketplace-will-leave-more-people-uninsured-should-be>

⁹ U.S. Department of Health and Human Services. "Biden-Harris Administration Quadruples the Number of Health Care Navigators Ahead of HealthCare.gov Open Enrollment Period." August 27, 2021. Available at: <https://www.hhs.gov/about/news/2021/08/27/biden-harris-administration-quadruples-number-health-care-navigators-ahead-healthcare-open-enrollment-period.html>

Administration made during the COVID-19 SEP.¹⁰ In its waiver application, Georgia claimed that the Georgia Access Model would increase enrollment in part due to increased web-broker marketing. Yet the substantial federal investment in outreach and enrollment activities and the availability of much more generous and more broadly available federal subsidies, create a market dynamic that is entirely different than the one contemplated in the state's application. Accordingly, Georgia's whole theory of change — how the waiver should influence stakeholders, how that might affect coverage take-up — is no longer credible.

As the state's projections are reconsidered in light of actual events, it is important to recognize that marketing by insurers and brokers occurs for different reasons and produces different outcomes than what we observe from publicly funded outreach and enrollment activities. Research has shown that while private marketing increases an individual insurer's share of enrollment, it does not increase overall enrollment as government advertising does.¹¹ This strongly suggests that the promise of insurer and broker advertising relied upon by the Georgia Access Model will be insufficient to compensate for the newly expansive federally funded outreach and enrollment activities they are expected to displace.

Finally, many of the new federal investments in outreach and enrollment activities have a special focus on improving access to coverage in underserved communities. For example, the 2021 Navigator awards "focus on outreach to people who identify as racial and ethnic minorities, people in rural communities, the LGBTQ+ community, American Indians and Alaska Natives, refugee and immigrant communities, low-income families, pregnant women and new mothers, people with transportation or language barriers or lacking internet access, veterans, and small business owners."¹² Our organizations strongly support additional outreach and enrollment investments in these communities to address longstanding disparities in coverage. Thirty million U.S. residents lacked health insurance in 2020, with most non-white groups more likely to be uninsured than whites.¹³ Of the 10.9 million people currently eligible for ACA marketplace coverage subsidies but unenrolled, 30 percent are Hispanic, 59 percent have a high school diploma or less, 42 percent are young adults, 16 percent live in rural areas, and 11 percent do not have internet access at home.¹⁴ The federal government's new emphasis on reaching historically underserved populations is likely to be materially undermined in Georgia if the state relies solely on private entities to provide outreach and enrollment activities.¹⁵

¹⁰ U.S. Centers for Medicare and Medicaid Services. "2021 Special Enrollment Period in response to the COVID-19 Emergency." January 28, 2021. Available at: <https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency>

¹¹ Naoki Aizawa and You Suk Kim. "Public and Private Provision of Information in Market-Based Public Programs: Evidence from Advertising in Health Insurance Marketplaces." National Bureau of Economic Research. August 2020. Available at: <https://www.nber.org/papers/w27695>

¹² U.S. Department of Health and Human Services. "Biden-Harris Administration Quadruples the Number of Health Care Navigators Ahead of HealthCare.gov Open Enrollment Period." August 27, 2021. Available at: <https://www.hhs.gov/about/news/2021/08/27/biden-harris-administration-quadruples-number-health-care-navigators-ahead-healthcare-open-enrollment-period.html>

¹³ Kenneth Finegold et al., *Trends in the U.S. Uninsured Population, 2010-2020*, U.S. Department of Health & Human Services' Office of the Assistant Secretary for Planning & Evaluation (ASPE), Feb. 11, 2021.

¹⁴ Daniel McDermott and Cynthia Cox, *A Closer Look at the Uninsured Marketplace Eligible Population Following the American Rescue Plan Act*, KFF, May 27, 2021.

¹⁵ Karen Pollitz, Jennifer Tolbert, and Kendall Orgera. "Navigator Funding Restored in Federal Marketplace States for 2022," KFF, September 29, 2021. Available at: <https://www.kff.org/private-insurance/issue-brief/navigator-funding-restored-in-federal-marketplace-states-for-2022/>; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3966511.

Impact on Comprehensiveness

Today, patients who shop on Healthcare.gov can trust that they are purchasing a health insurance plan that will allow them to manage their health conditions. However, under the Georgia Access Model, issuers and brokers could sell qualified health plans alongside other types of plans that discriminate against people with pre-existing conditions and will not cover enrollees' medical expenses if they get sick.

Since the approval of Georgia's waiver, evidence of misleading marketing related to short-term and other "skippy" plans has mounted. This marketing can lead individuals to unwittingly enroll in coverage that lacks key patient protections. For example, a secret shopper study conducted by Georgetown University during the COVID-19 SEP found that just 5 of 20 sales representatives recommended a marketplace plan even when their client would have qualified for a \$0 premium plan under the American Rescue Plan Act, instead steering patients towards short-term plans, healthcare sharing ministries and other products that do not offer comprehensive coverage.¹⁶ Georgia's waiver will almost certainly create confusion for patients and lead them to purchase coverage that does not cover preventive and primary care, hospitalizations, emergency room visits, prescription medications and other treatments and services needed to maintain their health. Our organizations urge the Departments to evaluate the risks of misleading marketing that drives patients towards less comprehensive coverage as you consider the Georgia Access Model's continued compliance with the statutory guardrails.

Impact on Affordability

Georgia's claim that its waiver would bring down premiums was largely premised on the assumption that the waiver will significantly increase enrollment. As discussed above, these assumptions are now out-of-date in light of the American Rescue Plan Act, COVID-19 SEP, and outreach and enrollment funding and can no longer support the conclusion that the waiver is compliant with federal law. The market fragmentation and consumer confusion caused by the Georgia Access Model risks making the individual market risk pool sicker and more expensive. With this waiver, some individuals, including those who newly enrolled in coverage during the past year, are likely to drop comprehensive coverage and opt for a non-compliant plan or forgo coverage altogether. As non-compliant, non-comprehensive plans are less attractive — and often, because of underwriting practices, inaccessible — to people with preexisting conditions, it is likely that those who shift out of the ACA-compliant market will be disproportionately healthy. By contrast, those who remain in the individual market are likely to have more complex health conditions, causing premiums to be higher than they would be in the absence of the waiver.

Conclusion

The Georgia Access Model withholds access to quality and affordable healthcare coverage for thousands of patients with serious and chronic health conditions. We strongly urge the Departments to revoke approval of the Georgia Access Model portion of the state's 1332 waiver. Thank you for the opportunity to provide comments.

Sincerely,

¹⁶ Dania Palanker and JoAnn Volk. "Misleading Marketing of Non-ACA Health Plans Continued During COVID-19 Special Enrollment Period." Georgetown University Health Policy Institute, Center on Health Insurance Reforms. October 2021. Available at: <https://georgetown.app.box.com/s/mn7kgnhibn4kapb46tqmv6i7putry9gt>

American Cancer Society Cancer Action Network
American Heart Association
American Kidney Fund
American Liver Foundation
American Lung Association
Arthritis Foundation
CancerCare
Cancer Support Community
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
The Leukemia & Lymphoma Society
Mended Little Hearts
National Multiple Sclerosis Society
National Kidney Foundation
National Organization for Rare Disorders
Pulmonary Hypertension Association
Susan G. Komen
The AIDS Institute