

July 22, 2020

Ryan Loke
c/o The Office of the Governor
206 Washington Street
Suite 115, State Capitol
Atlanta, Georgia 30334

Re: Georgia Access Section 1332 Waiver Application, Revised

Dear Governor Kemp,

Thank you for the opportunity to comment on Georgia's proposal to waive federal rules under the Affordable Care Act (ACA). I am writing on behalf of Georgians for a Healthy Future to express our organization's deep concern about the ACA Section 1332 waiver.

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 2010, we have been actively engaged in monitoring and advocating on ACA implementation issues that impact health care consumers in our state. As you know from our work together to pass the Surprise Billing Consumer Protection Act this year, we regularly field calls and questions from consumers with individual coverage as they navigate a dynamic health care landscape.

While we are supportive of the reinsurance program as outlined, we believe that the subsequently proposed Georgia Access model will encourage consumer enrollment in substandard plans and put Georgians at risk of losing coverage altogether. Georgians with little or no experience buying or using health insurance (e.g. young people), those with limited English proficiency, Georgians with low health literacy skills, and people with cognitive disabilities would be most at risk of experiencing adverse consequences from the outlined plan.

Georgians for a Healthy Future would like to specifically document the following concerns with the Georgia Access waiver.

1. The elimination of healthcare.gov unilaterally disarms Georgia consumers against insurance companies and web-brokers.

Following its rollout in 2012, healthcare.gov has become a central tool for consumers as they shop for and compare comprehensive health coverage. The federally facilitated marketplace is the only unbiased platform with no financial stake in the plans purchased by Georgia consumers. It limits the plans presented to those that cover the ten essential health benefits and abide by all other ACA requirements and is structured to ease the shopping experience, even for consumers with low health literacy skills.

Georgia's proposal to decentralize the enrollment process and move consumers to a tangle of privately-operated sites would disadvantage Georgia shoppers to the benefit of web-brokers and insurance companies. This move decreases transparency for consumers and ignores the misalignment of incentives for these kinds of companies.

Websites operated by private entities likely web-brokers are permitted to show substandard plans alongside comprehensive plans, which would require consumers to discern between the two types of plans. Many consumers struggle to successfully distinguish between non-ACA-compliant plans and comprehensive coverage that meets ACA standards.¹ Under Georgia's proposal, these consumers would have difficulty understanding their choices, putting them at risk of enrolling in plans that do not cover the health services they need or plans that have consequential financial implications (e.g. benefit cap).

This dynamic is made worse by the misaligned incentives of web-brokers and insurers who would be newly responsible for helping consumers shop and enroll with the best interests of consumers. Direct enrollment entities have a track record of steering consumers toward substandard plans that expose them to catastrophic costs if they get sick and making it difficult to compare plans.² Limiting enrollment to such private companies while dismantling healthcare.gov's centralized enrollment platform gives web-brokers and insurers more opportunity to direct healthy consumers to substandard plans, resulting in adverse selection that could increase premiums for comprehensive coverage.

The risk is perhaps greater for consumers who seek coverage but whose income is low enough that they or their children would be eligible for Medicaid. Unlike healthcare.gov, there is no stated requirement or incentive that the private enrollment entities provide consumers with information about their likely Medicaid eligibility or provide Georgia's Medicaid eligibility system with their coverage application for an eligibility determination.

¹ Consumer Representatives to the National Association of Insurance Commissioners, 2019. Report on Testing Consumer Understanding of a Short-Term Health Insurance Plan. Available at https://healthyfuturega.org/ghf_resource/new-consumer-testing-shows-limited-consumer-understanding-of-short-term-plans-and-need-for-continued-state-and-naic-action/

² Julie Appleby, December 21, 2018. *Short-Term Health Plans Hold Savings For Consumers, Profits For Brokers And Insurers*. Kaiser Health News.

The waiver application assumes with no evidence that there will be no coverage loss resulting from the transition from healthcare.gov to these alternate enrollment pathways. However, it is likely that in the midst of this significant shift a meaningful number of Georgians will fall through the cracks as they struggle to understand how and where to enroll in coverage and the choices available to them. Evidence from past transitions between federal and state marketplaces suggests that thousands of Georgians might lose coverage in the move away from HealthCare.gov.³

Plan disclosure requirements

The ACA requires that health plans “utilize the standard format established for presenting health benefits plan options” so that consumers can easily understand plan features and costs and compare across insurers. The state’s proposal does not specify how it might deal specifically with the requirements of plan disclosure outlined in the ACA. Without robust regulations about how plans can allowably be presented to consumers by enrollment entities, Georgia would remove yet another tool from consumers’ toolbox to help them understand their health plan choices. Failure to provide strong rules, oversight and enforcement would multiply the negative consequences of Georgia’s proposed dismantling of healthcare.gov and would disproportionately impact Georgia consumers with lower educational attainment, limited health literacy skills, or limited English proficiency.

2. A number of implementation issues are left unaddressed in the waiver application.

The Georgia Access waiver articulates that the newly established Office of Health Strategy and Coordination will implement the provisions of the proposed waiver. However, GHF is concerned that the Office will not be sufficiently resourced to carry out its responsibilities. The transition from healthcare.gov to the country’s first-ever decentralized enrollment system would be a significant undertaking, for which Georgia is budgeting only \$6.1 million in 2022 and \$1.2 million annually thereafter.

Based on the costs incurred by previous state transitions away from the ACA marketplace, it seems unlikely that this is enough money for Georgia to ensure a responsible transition. If funding is insufficient, it raises the likelihood of a difficult transition and significant reductions in coverage. It also suggests that regulatory oversight that might otherwise limit improper activities by enrollment entities to steer consumers into substandard plans will be lacking.

Despite the significance of the Office’s decisions on Georgia consumers, there is no guarantee in the authorizing legislation or the waiver application that consumers will

³ HealthInsurance.org, June 11, 2020. *Nevada health insurance marketplace: history and news of the state’s exchange*. Available at <https://www.healthinsurance.org/nevada-state-health-insurance-exchange/>

have a meaningful voice in the decision-making of the Office. While the authorizing legislation states that the Director of the Office may appoint advisory committees, GHF feels it is imperative that consumers are consistently and meaningfully engaged by the Office in the decision-making process.

3. The Georgia Access waiver violates at least one of the statutory guardrails set forth in Section 1332 the Affordable Care Act.

Scope of Coverage

The application projects that 2022 enrollment will increase by 25,000 consumers as a result of the Georgia Access Model, but no quantitative evidence is presented to back up this claim. Because enhanced direct enrollment is already a viable pathway to coverage for Georgia consumers, the waiver fails to provide consumers any additional enrollment options. Web-brokers can and do market to and enroll consumers in individual market coverage already. Georgia's application assumes that, by reducing consumers' choice of enrollment pathways, web-brokers and similar entities will do something they are not doing already — they will compete harder and market more than they have been.

Further, the evidence available from other state transitions suggests that the move from one system to another; the lack of resources that the state has dedicated to this initiative; and the absence of funds for robust marketing, consumer education, or enrollment assistance efforts will cause Georgia consumers to fall through the cracks. Nevada's transition to its own enrollment platform for 2020 was by all accounts smooth but the state still saw an enrollment decline. An as-yet-untried transition from healthcare.gov to the model proposed can reasonably be expected to reduce enrollment, even if all goes well.

The loss of coverage incurred as a result of the Georgia Access Model would violate the ACA's scope of coverage guardrail.

Comprehensiveness and Affordability

The established behaviors of enhanced direct enrollment entities to steer consumers to substandard plans also provides reason to believe that Georgia consumers under the Georgia Access model will be at increased risk of enrolling in less comprehensive coverage. Inherent in this model is the danger that enrollment in comprehensive coverage will fall as individuals (due to confusion, steerage, or other factors) shift into non-comprehensive plans. Such a shift out of comprehensive coverage may be especially likely to occur during the transition to Georgia Access, in consumers' first attempts to enroll under the new model. If this occurs frequently enough, the state's plan would violate the comprehensiveness guardrail.

The adverse selection of healthy consumers selecting relatively skimpy, non-ACA compliant plans could leave a sicker risk pool in the individual market, pushing up

premiums for comprehensive qualified health plans. Even if overall enrollment levels in the individual market are stable, those who remain in the individual market could be relatively sicker, causing premiums to be higher than they would be otherwise. It is possible that this negative effect on premiums for comprehensive coverage could be larger than the improvement in affordability due to reinsurance, thus violating the ACA's affordability guardrail.

A state acting in good faith could put in place strong oversight and evaluation practices to ensure these outcomes do not occur. To date, Georgia has not demonstrated an appetite for any meaningful level of oversight with respect to its ACA marketplace, largely ignoring it and at times taking action seemingly meant to undermine it.^{4,5} Given the state's track record, it is difficult to ignore the risks posed to consumers by the Georgia Access Model with respect to the comprehensiveness and affordability guardrails.

Despite the enumerated concerns related to subsequent provisions of the Georgia Access waiver application, GHF is supportive of the proposed regional reinsurance program. Like those approved in other states, the reinsurance portion of Georgia's proposal would reduce premiums and provide market stability. It would be a positive move forward for Georgia consumers.

Thank you in advance for your consideration of our comments on Georgia's Section 1332 waiver application. We hope that you will consider Georgians for a Healthy Future a resource as you seek to bring affordable, quality health coverage to more Georgians.

Sincerely,



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⁴ Atlanta Journal Constitution, September 11, 2013. [State insurance chief still hoping to halt Obamacare.](#)

⁵ WABE, August 29, 2019. [Kemp Backs New Insurance Option Aimed at Rural Georgia.](#)