

September 15, 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 via stateinnovationwaivers@cms.hhs.gov

Subject: Georgia Section 1332 Waiver Comments

From: Laura Colbert, Georgians for a Healthy Future, lcolbert@healthyfuturega.org

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). I am writing on behalf of Georgians for a Healthy Future to express our organization's concern about Georgia's 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. GHF regularly fields 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 proposed Georgia Access model will put Georgia consumers and families at risk of becoming un- or under-insured altogether. Georgians with chronic diseases, consumers with little or no experience buying or using health insurance, those with limited English proficiency, Georgians with low health literacy skills, rural Georgians, people of color in Georgia, and those who are eligible for but unenrolled in Medicaid 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. Fragmenting the insurance market would confuse consumers and discourage enrollment

Under the Georgia Access proposal, enrollment would likely decrease because buying insurance would become harder for Georgia consumers. Purchasing health insurance is a complex and costly undertaking. For the 79 percent of Georgia’s marketplace enrollees who use HealthCare.gov to shop for and enroll in health insurance, eliminating their preferred enrollment platform could not only cause confusion, it could paralyze them, possibly to the extent of making no decision at all. ¹

It is well documented that having too many choices makes it difficult for consumers to make a choice.^{2,3} Under the proposed system consumers would be required to choose among crowds of vendors before even beginning the process of selecting a specific health plan, with no guarantee of a single platform on which to see and compare all plan choices on equal terms. It should be expected that Georgians would be confused and have difficulty to making an informed choice. At the worst, some consumers may not make a choice at all.

2. Georgians eligible for Medicaid are unlikely to receive enrollment assistance

HealthCare.gov facilitates Medicaid enrollment with a “no-wrong-door” application that routes Georgians to the program for which they are eligible based on their family size, income, and other factors. In 2020, at least 38,000 Georgians enrolled in Medicaid via HealthCare.gov.⁴ Because Medicaid covers half of all Georgia children, this enrollment pathway is especially important for low- and middle-income Georgia families.

Brokers and insurers have no incentive to provide assistance to consumers who are screened as eligible for Medicaid rather than subsidized marketplace coverage, and as a result, they are unlikely to provide these Georgians with any help. A search on HealthCare.gov shows more than 1100 agents and brokers that enroll people in coverage in one Atlanta zip code but zero agents and brokers that say they will assist with Medicaid/CHIP enrollment.⁵ This is worrisome for Georgia consumers and families because the Medicaid enrollment process can be opaque, confusing, and slow. Without assistance, some may not make it through the Medicaid enrollment process, despite their eligibility for the program.

¹ Georgia Section 1332 State Innovation Waiver as submitted to CMS on July 31, 2020; https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers (hereafter, Waiver).

² Consumers Union, “The Evidence is Clear: Too Many Health Insurance Choices Can Impair, Not Help, Consumer Decision Making,” November 2012, https://advocacy.consumerreports.org/wp-content/uploads/2012/11/Too_Much_Choice_Nov_2012.pdf.

³ J. Michael McWilliams *et al.*, “Complex Medicare Advantage Choices May Overwhelm Seniors — Especially Those With Impaired Decision Making,” *Health Affairs*, September 2011, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2011.0132>.

⁴ CMS, *op. cit.*

⁵ Center on Budget & Policy Priorities analysis. HealthCare.gov search conducted on August 14, 2020, using the 30310 zip code.

3. In the transition from HealthCare.gov to the Georgia Access system, Georgians will lose coverage

The disruption created by the state's transition away from HealthCare.gov is likely to produce a drop in enrollment among Georgia consumers. The waiver proposal estimates the loss of enrollees due to the change from one system to another at about 2 percent (8,000 people). However other states' experiences show this figure is unrealistic.⁶ In 2017, Kentucky saw a reduction of 13 percent in its marketplace enrollment following a transition to the federal marketplace, compared to a 4 percent decline nationally.⁷ Nevada's marketplace enrollment fell by 7 percent in 2020 after its transition to a state-based marketplace, compared to flat enrollment nationally.⁸ Similar declines in Georgia would translate into a drop of 25,000-46,000 Georgians in marketplace enrollment.⁹ Enrollment declines of this scope would outweigh the increases expected by the waiver (27,000).

Drops in enrollment are even more likely given that minimal funding has been budgeted for the transition. The state's proposal sets aside about one-third of the low amount it previously estimated would be needed. This funding seems to be solely dedicated to the technological transition, but no specific funds have been allocated to help consumers understand the transition, how the new system will function, their options for enrollment, or how to find free, unbiased enrollment assistance.

4. The steering of healthier consumers towards substandard plans would make comprehensive coverage more expensive for those who need it

Georgia's proposal would give insurers, brokers, and other sellers new opportunities to steer healthier consumers toward substandard plans. These kinds of plans leave consumers exposed to catastrophic costs if they get sick. The adverse selection caused by healthier consumers moving to substandard plans could make comprehensive coverage more expensive for Georgians with chronic conditions and others who need it, reducing their enrollment as well.

Brokers and insurers have incentives to steer consumers toward substandard plans (e.g. short-term and single-disease plans). For brokers, these plans tend to pay higher

⁶ Waiver, *op. cit.*, p. 71.

⁷ Sarah Lueck, "Adopting a State-Based Health Insurance Marketplace Poses Risks and Challenges," CBPP, February 6, 2020, <https://www.cbpp.org/research/health/adopting-a-state-based-health-insurance-marketplace-poses-risks-and-challenges>.

⁸ CBPP calculations from CMS public use files. See also, Nevada Health Link, "Nevada's State Based Exchange Announces Enrollment Figures for Plan Year 2020," December 23, 2019, https://d1q4hslcl8rmbx.cloudfront.net/assets/uploads/2019/12/FINAL-2020-Nevada-Exchange-Prelim-Enrollment-Release_12.23.19.pdf; Sarah Lueck, "Adopting a State-Based Health Insurance Marketplace Poses Risks and Challenges," CBPP, February 6, 2020, <https://www.cbpp.org/research/health/adopting-a-state-based-health-insurance-marketplace-poses-risks-and-challenges>.

⁹ As this calculation indicates, enrollment declines due to the Georgia Access Model would likely exceed the modest increases (about 2,000 people) Georgia projects from the reinsurance program and the total increase Georgia projects under the waiver (27,000).

commissions; short-term plans pay up to ten times as much as ACA-compliant plans.¹⁰ Insurers benefit because short-term plans are not required to meet the same medical loss ratio standards as ACA-compliant plans.¹¹

Healthier and younger Georgia would be more likely to choose short-term plans, since less healthy people—like those living in rural areas, as well as Black Georgians and other people of color—are less likely to qualify for such a policy and face higher premiums when they do. If healthier consumers leave the ACA-compliant market, premiums are likely to rise as its risk pool becomes less healthy. (Similarly, the recent expansion of short-term plans nationally caused premiums for comprehensive coverage to go up by an average of 0.5 to 4 percent.¹²

5. The enrollment of rural Georgians and Georgians of color in substandard plans would further threaten their health and economic well-being.

The enhanced direct enrollment programs demonstrate that some insurance sellers screen applicants before beginning the enrollment process and then divert some toward substandard plans that leave enrollees with chronic conditions and other health needs exposed to unaffordable costs.¹³ Even in less egregious circumstances, these companies are allowed to show substandard plans alongside comprehensive plans, thus encouraging Georgia consumers to enroll in substandard plans.

Substandard plans are not required to cover the ten essential health benefits, leaving Georgians of color and rural residents, among others, potentially without meaningful access to health services. More than one-third of substandard plans do not cover prescription drug benefits for example, and more than half do not cover mental health services.¹⁴ For Georgians of color and rural Georgians, who are likelier to have chronic health conditions, prescription drugs are one of the most cost-effective ways to maintain their health and well-being. On top of that, substandard plans are allowed to exclude coverage for pre-existing conditions altogether and charge more for people with pre-existing conditions like substance use disorders, asthma, and now COVID-19. That leaves Georgians of color, rural Georgians, and others vulnerable to catastrophic costs, limited access to care, and other negative consequences under this proposal.

¹⁰ House report, *op. cit.*, p. 43. Due to the time it takes to assist marketplace consumers, some brokers report that they lose money on each marketplace enrollment, and so have stopped marketing their services or operate only through referrals. Others say they are uneasy about selling short-term plans despite the higher commissions, given the plans' risks for people with pre-existing conditions. See Sabrina Corlette *et al.*, "Perspective from Brokers: The Individual Market Stabilizes While Short-Term and Other Alternative Products Pose Risks," Urban Institute, April 2020, <https://www.urban.org/research/publication/perspective-brokers-individual-market-stabilizes-while-short-term-and-other-alternative-products-pose-risks>.

¹¹ House report, *op. cit.*, p. 48.

¹² Hansen and Dieguez, *op. cit.*, p. 3.

¹³ Tara Straw, "Direct Enrollment' in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm," CBPP, March 15, 2019, <https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>.

¹⁴ Kaiser Family Foundation, <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>

6. The Georgia Access waiver violates the statutory guardrails set forth in Section 1332 the Affordable Care Act.

Because it would harm Georgia consumers and families, the Georgia Access waiver is not approvable under federal law. Georgia's waiver fails the ACA's tests of coverage, comprehensiveness, and affordability. There is a high chance that the waiver would cause thousands of Georgians to lose coverage and no reason to expect it would meaningfully increase coverage. It also would likely leave many Georgians with less affordable or less comprehensive coverage than they would otherwise have. These violations of federal law make the waiver ineligible for approval by federal officials.

Despite our concerns related to the Georgia Access portion of the state's waiver application, Georgians for a Healthy Future supports the regional reinsurance program as proposed. Like those approved in other states, the reinsurance portion of Georgia's proposal would lower premiums, provide market stability and benefit Georgia consumers.

Before closing this letter, we would like to call your attention to the attachment. We have taken the liberty to attach all public comments from the state's public comment period which took place from July 9 to July 23, 2020. We encourage the reviewers of Georgia's proposal to consider the strong sentiments expressed by most commenters against the waiver.

Thank you for your consideration of our comments, and those we are submitting alongside our own, on Georgia's Section 1332 waiver application. Please contact me with any questions you have regarding our comments.

Sincerely,



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