



December 2, 2019

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

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 and we regularly field calls and questions from consumers with individual coverage as they navigate a dynamic health care landscape.

In early 2019, as the Georgia General Assembly began its considerations of the authorizing legislation for the proposed waiver, GHF laid out four principles for any 1332 waiver application sought by the State. We believe these four principles set forth a framework that builds on the successes of the ACA and promote further gains for Georgia consumers:

1. Preserve critical consumer protections, like those that protect consumers with pre-existing conditions
2. Maintain comprehensive, quality health coverage, including the requirement that all insurance plans cover the ten essential health benefits
3. Insulate consumers from rising health care costs by building a stable, robust health insurance marketplace and investing in policies that increase marketplace enrollment

4. Disallow increases in financial liabilities for low- and middle-income consumers (those between 100-400% FPL)

Unfortunately, the Georgia Access waiver violates all four of these principles. The proposal would raise premiums for comprehensive health plans, encourage consumer enrollment in substandard plans, and likely cause many Georgians to lose coverage altogether. Lower-income Georgians, people of color, and people with pre-existing health conditions 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 powerful 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 and limits the plans presented to those that cover the ten essential health benefits and abide by all other ACA requirements. It is structured to ease the shopping experience, even for consumers with low health literacy skills.

The State'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 web-brokers and insurance companies.

Websites operated by these private entities 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 the State'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 mis-aligned incentives of web-brokers and insurers who would be newly responsible for helping consumers shop and enroll with the best interests of consumers. These privately-operated sites earn commissions for plans sold, and commissions are notably higher for substandard plans, motivating the sites to

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/

highlight these options for consumers over ACA-compliant plans, putting them at even greater risk of enrollment in an ill-fitting plan.²

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.

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.

2. Restructuring and capping financial assistance risks the finances of Georgia consumers.

In addition to Medicaid expansion, one of the ACA's most powerful mechanisms for reducing the number of uninsured Americans is the financial assistance available to lower- and moderate-income consumers who purchase individual health coverage. Of Georgia's ACA marketplace enrollees, 88% receive financial help in the form of premium tax credits to lower their monthly premiums and 66% receive cost-sharing reductions to lower their deductible and other out-of-pocket costs.³

The State's proposal to take control of these subsidies, allow the funds to apply to substandard plans, and cap the subsidies available risks Georgia consumers' finances and access to care, especially for those with pre-existing conditions.

As financial assistance is allowed to apply to a wider array of plans, healthier Georgians are likely to enroll in non-ACA-compliant plans with skimpy benefits and cheaper premiums, while Georgians with chronic conditions or other health needs continue to enroll in comprehensive "qualified health plans" (QHPs). The State's application improbably suggests that the resulting adverse selection will make comprehensive coverage only 1% more expensive. However, it is reasonable to expect — and the application offers no evidence to suggest otherwise — that premiums will rise substantially, leaving Georgians (including those with pre-existing conditions) who want full coverage to pay more for their plans.⁴

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

³ Georgians for a Healthy Future, 2019. *Getting Georgia Covered: What we can learn from the sixth open enrollment period*.

⁴ Commonwealth Fund, 2017. *How to Noncompliant Health Plans Affect the Market?*

Because financial assistance is currently based on premiums for comprehensive coverage which will be more expensive, providing help to all eligible Georgians is very likely to cost more than the State's budgeted amount. If the financial cap set by this proposal is met for this reason or any other, otherwise eligible Georgians who enroll would be left with no financial help at all. Instead they would have to pay for the full costs of their plan. In this situation, a 25-year-old, single Georgian making \$12,700 annually (just over the poverty line) who purchases a silver level plan could expect to pay almost 80% of her annual income towards insurance costs, making insurance "accessible" in name only.⁵

The financial cap is further problematic because the state is in no way obligated to maintain the proposed level of financial assistance for Georgia consumers. In an economic recession or under a future Governor with little regard for the importance of health insurance, the financial cap could be lowered, or financial assistance could be eliminated leaving lower- and moderate-income Georgians with no true pathway to coverage.

The Georgia Access waiver is silent about how the restructuring of financial assistance will impact the availability of cost-sharing reductions for consumers making between 100-250% of the federal poverty line (FPL). Without specifics, we can only assume that CSRs will be eliminated or reduced. As the costs of accessing care add up, lower-income Georgians are more likely to put off seeking care until absolutely necessary.⁶

(If it is the case that the State will administer a cost-sharing reduction subsidy, there is no information whatsoever about how that aspect of the program would be implemented.)

3. Expanding access to health plans that do not meet ACA standards limits access to care and undercuts protections for Georgia consumers.

The State's proposal to expand access to plans that do not meet ACA standards by waiving significant parts of the law undercuts protections for Georgians who are pregnant or planning for a family, people with chronic conditions, Georgians who need mental health or substance use services, people with limited English proficiency, and many other populations of Georgians.

Plans that do not cover the ten essential health benefits (EHBs) put consumers at risk of not having necessary coverage when they need it. These substandard plans, called "eligible non-QHPs" in the waiver application, frequently do not cover or offer very limited coverage of prescription drugs, mental health care and substance use services, or maternity care, leaving consumers fully financially responsible if they need these

⁵ Calculations based on 2020 plan premiums and cost-sharing amounts. Calculations available upon request.

⁶ Kaiser Family Foundation, 2019. *Data Note: Americans' Challenges with Health Care Costs*.

services while enrolled (perhaps unknowingly). One statistic most effectively underscores the implications of this proposed erosion of comprehensive coverage for Georgia consumers: Nearly half of U.S. pregnancies are unplanned.⁷

To add to the risk for Georgia consumers, the State's waiver application is unclear about the parameters of eligible non-QHPs. It leaves open the possibilities that these newly expanded plans could charge women or seniors more for the same coverage; delay coverage of a pre-existing condition for some period of time; disregard the ACA's out-of-pocket maximum limits; or impose annual or lifetime limits on coverage. Any of these options would significantly undercut protections for Georgians with pre-existing conditions.

In order to allow financial assistance to apply to substandard plans, the Georgia Access waiver requests to waive a number of critical consumer protections. The elimination of any one of these protections is troubling and the combined effect would be dramatic for Georgia consumers.

Mental health parity

The State's proposal to eliminate the requirement that applies federal mental health parity law to QHPs would turn back the clock to a time when insurance companies could treat mental health and substance use disorder (MH/SUD) needs differently from other health needs. Waiving this part of the ACA would allow insurance companies to establish different deductibles for MH/SUD services, charge higher co-pays, impose onerous pre-authorization procedures, or exclude MH/SUD providers from plan networks, among a bevy of other barriers that would limit access to MH/SUD services.

Moreover, federal parity law requirements only apply if MH/SUD benefits are present in a plan. Under the proposed waiver, non-QHPs would not have to cover all EHBs so plans could leave out MH/SUD coverage altogether, effectively eliminating parity for all people enrolled in those types of plans.

At a time when more and more Georgians are in need of MH/SUD services and supports, this part of the State's proposal seems especially unwise and short-sighted.

Network adequacy

According to a 2015 study, Georgia has the narrowest provider networks in the country.⁸ Predictably, GHF regularly hears from consumers about the difficulty they have finding in-network providers, especially when seeking specialty care. Waiving the ACA's requirements related to network adequacy would only serve to exacerbate this dynamic, further inhibiting Georgians as they attempt to access needed health services. This is especially true for lower-income consumers, populations who are medically

⁷ Guttmacher Institute, 2019. *Unintended Pregnancy in the United States*.

⁸ University of Pennsylvania Leonard Davis Institute of Health Economics, 2015. *State Variation in Narrow Networks on the ACA Marketplace*.

underserved, and people of color who are more likely to rely on essential community providers, as well as people with chronic diseases who need regular care from a specialist.

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. In waiving this requirement, Georgia would remove yet another tool from consumers’ toolbox to help them understand their health plan choices. This move would multiply the negative consequences of the State’s proposed dismantling of healthcare.gov and would disproportionately impact Georgia consumers with lower educational attainment, limited health literacy skills, or limited English proficiency.

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

Comprehensiveness

A core aim of Georgia’s waiver application appears to be to encourage enrollment in health coverage that is not comprehensive and would not satisfy the Section 1332 comprehensiveness guardrail. The application seems to try to downplay the implications of such an approach by relying on several unsupported assumptions:

- The application assumes that eligible non-QHPs will provide 90% of the covered benefits that QHPs do. However, it provides no analysis to support this assumption. Notably, this assumption does not apply to cost-sharing. In other words, an eligible non-QHP might provide 90% of a QHP’s benefits, but also may impose severe cost-sharing limitations that would make the actuarial value of the plan far lower than its QHP counterpart.
- Crucially, the proposal assumes that comprehensive coverage (QHPs) will continue to be available in all rating areas in Georgia. However, no explanation or analysis is provided to support this assumption.

Affordability

The program’s cap on subsidy funding appears likely to violate the Section 1332 affordability guardrail as it appears in statute. By design, it would leave some individuals who qualify for coverage subsidies under the ACA without any financial assistance at all. The State’s assertion that the cap will not be reached in year one cannot be credited because it is based on the unsubstantiated assumption articulated earlier (that the adverse selection caused by increased availability of skimpy plans will increase the costs of comprehensive coverage by only 1%). The actuarial document itself notes that the enrollment impacts of the program are uncertain.

It is not at all clear that the state subsidy includes any sort of cost-sharing assistance. The application would waive the cost-sharing reduction (CSR) program, including insurers' obligation to provide enrollees with this assistance. However, the application makes no mention anywhere of any cost-sharing component of the state subsidy and does not draw down any CSR pass-through funds (since the federal government is not paying CSRs at the moment, there is no funding to redirect). All calculations and assumptions refer to premium assistance only. If the program were not to contain a CSR replacement, the omission would seemingly violate the affordability guardrail on its own. Yet there is virtually nothing in the application to suggest such assistance is included in the state's vision.

Scope of Coverage

The application projects that enrollment will increase by 30,000 as a result of the Georgia Access Model, but recognizes that both new and existing enrollment will settle in non-ACA-compliant plans at the expense of comprehensive coverage. While the federal government's October 2018 guidance on Section 1332 waivers suggests it is permissible for a waiver program to reduce enrollment in comprehensive coverage, so long as total enrollment other coverage products rises, there are significant legal questions about whether this interpretation is consistent with the federal statute.

Federal Deficit Neutrality

The application fails to account for all of the federal budgetary effects of waiving the premium tax credit structure. In particular, the waiver would eliminate revenues that the federal government otherwise would be owed by Georgia employers under the employer mandate. These lost revenues, which could be substantial (above \$100 million), will reduce the amount of federal pass-through dollars available to the state. This reduction could result in a violation of the guardrails or a state subsidy program that is even more underfunded than it would be as designed.

5. 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 many of the provisions of the proposed waiver. However, GHF is concerned that the Office will not be sufficiently resourced to carry out the full scope of its responsibilities. The implementation of the state subsidy program would be a significant undertaking, for which Georgia is budgeting \$13.5 million prior to 2022 and \$5 million annually thereafter. It is not clear whether that is sufficient and there is little detail in the application to suggest how the state plans to address the various significant technical and operational elements of its proposal.

The waiver application further asserts that eligible non-QHPs will be in the single risk pool. Plans in the single risk pool are subject to ACA risk adjustment (which cannot be

waived). However, it is not clear how risk adjustment can be made to work where the pool is comprised of products as potentially dissimilar in structure as those that would be newly offered under this application.

The State's proposal says it will maintain the same subsidy eligibility and program parameters in 2022 as are currently in place. This suggests that Georgia will administer a state premium tax credit that will require yearly reconciliation at tax time by enrollees. Reconciliation is a complicated process to establish and administer and about which to educate tax professionals and the public. There is no information in the application about whether this is the state's plan, and if it is, how it would work.

Despite the significance of these decisions and others on Georgia consumers, there is no guarantee in the authorizing legislation or the waiver application that consumers will 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.

Despite these 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 GHF a resource as you seek to bring affordable, quality health coverage to more Georgians.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Colbert', with a stylized flourish at the end.

Laura Colbert
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