



January 7, 2022

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

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

Submitted via electronic mail: stateinnovationwaivers@cms.hhs.gov

Dear Secretary Becerra and Secretary Yellen:

Thank for you for the opportunity to comment on Part II of Georgia's section 1332 waiver application, which details the Georgia Access Model and its compliance with the statutory guidelines set forth in section 1332(b1)(1)(A)-(D) of the Affordable Care Act (ACA). This comment is submitted on behalf of the Center for American Progress (CAP), an independent, nonpartisan policy institute based in Washington, D.C.

We applaud the commitment of the Department of Health and Human Services (HHS) and the Department of the Treasury to helping states develop health insurance market reforms that expand coverage, lower costs, and ensure that health care is accessible to all Americans. Since 2017, section 1332 state innovation waivers have provided 16 states with the flexibility to develop and implement strategies and reforms designed to address local market challenges related to coverage affordability and access while maintaining the core protections and intentions of the ACA.¹

The COVID-19 pandemic and public health emergency, coupled with legislation and administrative actions during the Biden administration, have significantly altered Georgia's health coverage landscape. These changes necessitate re-evaluation of the previously approved Georgia Access Model to determine whether it satisfies the statutory guardrails in the current environment.

In this letter, we highlight the implications of recent federal legislative and regulatory changes on coverage and discuss additional operational factors to be taken into consideration during the Departments' evaluation of whether the waiver meets the guardrails.

¹ Centers for Medicare and Medicaid Services, "Section 1332: State Innovation Waivers," available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.

Implications of Federal Legislative and Regulatory Changes on Key Underlying Assumptions in Georgia’s 1332 Waiver Application

A variety of federal policy changes have been implemented since the Centers for Medicare and Medicaid Services (CMS) approved Georgia’s section 1332 waiver application in November 2020. In 2021, Congress passed major pieces of legislation that included provisions related to marketplace coverage, and the Biden administration carried out executive actions to stem employment-related coverage losses during the COVID-19 pandemic, to reduce the number of uninsured, and to expand coverage and affordability. Notably, Congress passed the American Rescue Plan Act (ARPA) in March 2021, providing enhanced premium tax credits to new and existing marketplace enrollees. In addition, the federal COVID-19 special enrollment period (SEP) for HealthCare.gov, which ran from February 15 to August 15, 2021, improved access to coverage and facilitated enrollment for over 2.8 million Americans.²

These federal interventions have altered Georgia’s health marketplace dynamics, impacting the enrollment projections and affordability assumptions underlying analyses in the approved 1332 waiver application. A sound assessment of Georgia’s compliance with the statutory guardrails for the waiver requires re-baseline.

Enrollment

Georgia’s 1332 waiver application described the state’s individual market for health insurance as one of decline, with steadily dwindling marketplace enrollment. In 2019, Georgia had the third-highest uninsured population in the nation at 1.4 million (14.8 percent of total population) and 458,437 Georgians enrolled in individual market coverage.³ Between 2016 and 2019, there was a 22 percent decrease in marketplace enrollment, with 129,000 fewer Georgians covered through marketplace plans.⁴

Georgia asserted that state intervention, via the section 1332 waiver, was needed to increase enrollment and stabilize the market. Under the proposed Georgia Access Model, the state would leave the federally facilitated marketplace (FFM) starting with enrollment for plan year 2023, and Georgia consumers would instead rely on private insurance brokers, vendors, and agents for enrollment. Insurers and agents would conduct annual marketing and outreach to consumers ahead of open enrollment. Rather than use the HealthCare.gov portal for plan shopping and selection, Georgians would instead visit a state webpage that would direct them to privately operated websites for plan shopping and to commercial-market web brokers or carriers directly for application and enrollment. Using a 2018 baseline marketplace enrollment of 367,562, Georgia officials estimated that the model would generate a 6.8 percent increase in ACA-compliant

² United States Department of Health and Human Services, “2021 Final Marketplace Special Enrollment Period Report” (Washington: 2020), available at <https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf>.

³ State of Georgia, “Georgia Section 1332 State Innovation Waiver,” available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-#please_visit_the_Georgia_waiver_section_of_this_webpage_below.

⁴ Ibid.

individual market enrollment in Plan Year 2023.⁵ According to Georgia's waiver application, this enrollment increase would be driven by new marketing and consumer outreach as well as lower premiums due to the implementation of a state reinsurance program and the Georgia Access Model.

Coverage trends have deviated from the enrollment baseline in Georgia's waiver application. Recent federal action has contributed to substantial enrollment growth, with marketplace plan selections reaching an all-time high of 13.6 million nationally as of December 2021.⁶ Even prior to the open enrollment period currently underway, Georgia's marketplace enrollment was bolstered by both APRA and the HealthCare.gov COVID-19 SEP. During the six-month COVID-19 SEP, there were 147,463 new plan selections in Georgia.⁷ This marks a more than three-fold increase from SEP plan selections during the same timeframe in years prior: 41,138 in 2020 and 25,656 in 2019.⁸ Overall, by August 2021, Georgia's effectuated individual market enrollment was 549,066, an increase of 49.3 percent from the 2018 baseline included in their waiver application.⁹

Marketplace enrollment continues to increase due to federal regulatory action. For 2022 coverage, CMS extended the open enrollment period for HealthCare.gov by 30 days, providing additional time for consumers to elect or make changes to their coverage.¹⁰ While the current open enrollment period does not close until January 15, the most recent CMS enrollment report notes continued growth, with 5.8 million Americans (including 653,990 Georgians) selecting marketplace plans as of December 15, 2021.¹¹ The Biden Administration has invested \$100 million in advertising, outreach, and marketing to improve awareness around marketplace coverage, and it supported in-person assistance with \$80 million in funding for navigator organizations.¹² These consumer-focused investments will likely continue to boost marketplace enrollment; given this, it is unclear whether the effects of the marketing and outreach activities under the Georgia Access

⁵ Centers for Medicare and Medicaid Services, "Georgia: State Innovation Waiver under section 1332 of the PPACA" (Baltimore: 2020), available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-/1332-GA-Fact-Sheet.pdf.

⁶ United States Department of Health and Human Services, "All Time High: 13.6 Million People Signed Up for Health Coverage on the ACA Insurance Marketplaces With a Month of Open Enrollment Left to Go," Press release, December 22, 2021, available at <https://www.hhs.gov/about/news/2021/12/22/all-time-high-13-million-people-signed-up-for-health-coverage.html>.

⁷ United States Department of Health and Human Services, "2021 Final Marketplace Special Enrollment Period Report" (Washington: 2021), available at <https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf>.

⁸ Ibid.

⁹ Centers for Medicare and Medicaid Services, "Total Effectuated Enrollment by State, August 2019-2021" (Baltimore: 2021) available at <https://www.cms.gov/files/document/2019-2021-aug-effectuated-enrollment.xlsx>.

¹⁰ Healthcare.gov, "Dates and deadlines for 2022 health insurance," available at <https://www.healthcare.gov/quick-guide/dates-and-deadlines/>.

¹¹ Centers for Medicare and Medicaid Services, "Marketplace Weekly Enrollment Snapshot: Week 6," Press release, December 22, 2021, available at <https://www.cms.gov/newsroom/press-releases/hhs-announces-increased-marketplace-enrollment-trends-nearly-46-million-new-plan-selections-open>.

¹² U.S. Department of Health and Human Services, "HHS Announces the Largest Ever Funding Allocation for Navigators and Releases Final Numbers for 2021 Marketplace Open Enrollment," Press release, April 21, 2021, available at <https://www.hhs.gov/about/news/2021/04/21/hhs-announces-the-largest-ever-funding-allocation-for-navigators.html>.

Model can be expected to raise enrollment to the same degree projected using the 2018 baseline.

Affordability

The affordability conditions described in Georgia's waiver application have also changed profoundly due to federal legislation. In its waiver application, Georgia attributed its high uninsured rate to a lack of affordability, citing high premiums and out-of-pocket costs for marketplace coverage. The state estimated that in 2018, more than half of its uninsured population (795,000) had family incomes between 100 and 400 percent of the federal poverty level (FPL) yet remained unenrolled despite having incomes in the range eligible for marketplace financial assistance.¹³

The American Rescue Plan Act (ARPA) impacted the affordability assumptions in Georgia's waiver application. For 2021 and 2022, the American Rescue Plan Act enhances financial assistance for low- and middle-income families by lowering the percentage of income a subsidy-eligible enrollee owes toward the benchmark silver plan. ARPA also enables those with family incomes up to 150 percent of the FPL to enroll in that plan with no premium cost and makes premium tax credits newly available to people with family incomes above 400 percent of the FPL, who were not previously eligible for financial assistance.¹⁴

The enhanced financial assistance under ARPA has lowered marketplace enrollees' net premiums and contributed to growth in enrollment.¹⁵ HHS estimated that 127,100 uninsured Georgians were newly eligible for premium tax credits thanks to ARPA and that 134,900 uninsured Georgians were eligible for \$0 premium benchmark coverage.¹⁶ HHS has encouraged existing enrollees to return to HealthCare.gov to claim the expanded financial assistance as advance premium tax credits. Among the 356,487 Georgia enrollees who returned to the marketplace to select a new plan or update their plan during the COVID-19 SEP, the average reduction in average monthly net premium was 54 percent.¹⁷ ARPA also appears to be boosting open enrollment plan selections: as of mid-December, over 400,000 people had signed up to receive premium tax credits for 2022 coverage "that would have been inaccessible to them prior to the ARP," according to CMS.¹⁸

¹³ State of Georgia, "Georgia Section 1332 State Innovation Waiver."

¹⁴ Emily Gee and Thomas Waldrop, "Policies To Improve Health Insurance Coverage as America Recovers From COVID-19," Center for American Progress, March 11, 2021, available at <https://www.americanprogress.org/article/policies-improve-health-insurance-coverage-america-recovers-covid-19/>.

¹⁵ Center for Consumer Information and Insurance Oversight, "Plan Year 2022 Qualified Health Plan Choice and Premiums in Healthcare.gov States" (Washington: Centers for Medicare and Medicaid Services, 2021), available at <https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/2022QHPPremiumsChoiceReport.pdf>.

¹⁶ U.S. Department of Health and Human Services, "Fact Sheet: The American Rescue Plan: Reduces Health Care Costs, Expands Access to Insurance Coverage and Addresses Health Care Disparities," Press release, March 12, 2021, available at <https://www.hhs.gov/about/news/2021/03/12/fact-sheet-american-rescue-plan-reduces-health-care-costs-expands-access-insurance-coverage.html>

¹⁷ U.S. Department of Health and Human Services, "2021 Final Marketplace Special Enrollment Period Report."

¹⁸ Centers for Medicare and Medicaid Services, "All-Time High: 13.6 Million People Signed Up for Health Coverage on the ACA Insurance Marketplaces With a Month of Open Enrollment Left to Go."

In fact, the Congressional Budget Office (CBO) had projected that ARPA's subsidy changes would substantially increase marketplace enrollment.¹⁹ CBO forecast that 1.7 million more people would be enrolled in marketplace plans in 2022, including 1.3 million who would have otherwise been uninsured, and that increase in enrollment would "would persist beyond 2022" into 2023.²⁰

In addition, the Build Back Better Act under consideration in Congress would further expand coverage and improve affordability, including during years in which the proposed Georgia Access Model is in effect. The House-passed version of the Build Back Better legislation would close the Medicaid coverage gap in Georgia and other non-expansion states, making individuals with family incomes up to 138 percent FPL eligible to obtain marketplace plans with no premium and a 99 percent actuarial value so that they would face only minimal out-of-pocket costs.²¹ An estimated 269,000 low-income, uninsured Georgians currently fall into the Medicaid coverage gap and are eligible neither for Medicaid nor for marketplace financial assistance.²² In addition, the legislation would extend the ARPA premium subsidy enhancements and eligibility changes through 2025.

Compliance Implications

ARPA's enhanced subsidies and the HealthCare.gov COVID-19 SEP contributed to record-high marketplace enrollment in 2021.²³ Georgia's marketplace enrollment at the conclusion of 2021 is markedly different from the 2018 baseline provided in its waiver application and as a result, the state's pre-ARPA impact analysis did not account for this increase in enrollment. An updated analysis reflecting the considerable coverage gains resulting from both ARPA expansion and the federal COVID-19 SEP would enable CMS to properly determine Georgia's compliance with the 1332 scope of coverage guardrail.

Implementation Impacts of Georgia Access Model

There are additional operational elements of the Georgia Access Model that should also be considered when determining its compliance with 1332 guardrails as well as its alignment with principles of equity, coverage affordability, and accessibility.

¹⁹ Congressional Budget Office, "Reconciliation Recommendations of the House Committee on Ways and Means" (Washington: 2021), available at <https://www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf>

²⁰ Ibid.

²¹ Nicole Rapfogel, Thomas Waldrop, Emily Gee, Natasha Murphy, Jill Rosenthal, "The Build Back Better Act Would Improve Health Care and Lower Costs, Center for American Progress, December 6, 2021, available at <https://www.americanprogress.org/article/the-build-back-better-act-would-improve-health-care-and-lower-costs/>.

²² Rachel Garfield, Kendal Orgera, and Anthony Damico, "The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid," Kaiser Family Foundation, January 21, 2021, available at <https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/>.

²³ Katie Keith, "Record-High Marketplace Enrollment, New Census Data, And More," Health Affairs Forefront, September 21, 2021, available at <https://www.healthaffairs.org/doi/10.1377/forefront.20210921.302725/full/>

Erosion of Consumer Assistance

The Georgia Access Model intends to replace federally trained and funded Navigators with private sector brokers for consumer outreach, education, and enrollment. Since the ACA's inception, navigators have provided professional consumer assistance to millions of Americans.²⁴ In its application, Georgia contends that this transition will provide marketplace consumers with improved customer service, contributing to enrollment increases. However, the absence of Navigators will likely have an adverse impact on enrollment, especially for harder-to-reach populations. Unlike agents and brokers, Navigators are prohibited from receiving commissions and are thus financially disinterested in consumers' plan selections.²⁵ A 2020 Kaiser Family Foundation analysis found that private brokers were less likely than Navigators to assist consumers with complex applications, including for those who were uninsured, needed help in another language, did not have computer or internet access, or needed to apply for Medicaid.²⁶

The inability of the Georgia Access Model to equitably respond to the needs of diverse populations and historically marginalized communities is concerning, and it is out of alignment with the Biden Administration's priorities. Executive Orders 13985 and 14009 request federal agencies to conduct an equity assessment of new and existing policies and require review (and subsequent suspension, revisions or rescission) of federal actions that undermine coverage accessibility and affordability.

Enrollment Diversion

Consistent with the Affordable Care Act's "no wrong door" philosophy, the federal marketplace enrollment application directs consumers to the appropriate health insurance program based on their household characteristics, including income and family size. When appropriate, applicants visiting HealthCare.gov are re-routed to other programs, including Medicaid/CHIP, based on their eligibility. This ensures that people seeking marketplace coverage are guided to more affordable options for comprehensive coverage if their incomes render them ineligible for marketplace financial assistance.

By relying on private enrollment entities, the Georgia Access Model does not replicate "no wrong door," leaving low-income Georgians vulnerable to ending up in coverage that does not meet their needs. While Georgia proposes to integrate the Access Model directly with the Medicaid eligibility system, consumers are likely to need assistance after their eligibility determination including understanding their new coverage (provider selection, premiums, appeals) and renewal. Moreover, the services provided by Navigators and brokers are not interchangeable:²⁷ Private brokers are not incentivized to enroll Medicaid/CHIP-eligible consumers into public coverage and may instead steer them toward private coverage for which they receive commissions, including plans that may not be affordable or that do not provide comprehensive coverage.²⁸ Furthermore, the higher

²⁴ Karen Pollitz and others, "Consumer Assistance in Health Insurance: Evidence of Impact and Unmet Need," Kaiser Family Foundation, August 7, 2020, available at <https://www.kff.org/report-section/consumer-assistance-in-health-insurance-evidence-of-impact-and-unmet-need-issue-brief/>.

²⁵ 45 C.F.R. §§ 155.210(d)(1)-(4) and 155.215(a)(1)

²⁶ Pollitz, "Consumer Assistance in Health Insurance: Evidence of Impact and Unmet Need."

²⁷ Ibid.

²⁸ Tara Straw, "'Direct Enrollment' in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm," Center on Budget and Policy Priorities, (Washington: 2019), available at

commissions for and profitability of non-ACA compliant plans, such as short-term limited duration plans, can encourage insurance companies, agents, and brokers to divert consumers to substandard coverage.²⁹ Such plans are not obligated to provide the ACA's essential health benefits—basic services like prescription drug coverage or maternity care—and are not bound by the ACA's medical loss ratio rules.

The increase in marketplace enrollment under ARPA and the current regulatory environment means that the potential for diversion of new or renewing customers could be even greater than at the time of the original waiver projections. As CMS considers new analysis of the Georgia Access Model, we encourage the agency to evaluate whether it could violate the statutory guardrails by causing diversion of consumers into plans that are not at least as comprehensive as ACA plans and, in turn, result in fewer Georgians covered than without the waiver.

Conclusion

The enrollment baseline and affordability conditions undergirding the Georgia Access Model were significantly altered by the enactment of the American Rescue Plan and executive actions related to marketplace outreach, the COVID-19 special enrollment period, and the duration of open enrollment for HealthCare.gov. These policy changes have resulted in record-high marketplace enrollment,³⁰ and these gains will likely persist under the current statutory and regulatory environment. We support CMS's demand that Georgia provide updated analysis reflecting the current status quo and demonstrate that the Georgia Access Model would sustain current levels of marketplace enrollment in compliance with the coverage guardrail. In addition, the Departments should consider the Georgia Access Model's misalignment with the Administration's stated commitment to equity, accessibility, and affordability.

We appreciate the opportunity to provide comment and thank the Departments for considering our recommendations.

Sincerely,

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<https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>.

²⁹ Ibid.

³⁰ United States Department of Health and Human Services, "All Time High: 13.6 Million People Signed Up for Health Coverage on the ACA Insurance Marketplaces With a Month of Open Enrollment Left to Go."