September 18, 2020

Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Honorable Steve Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Georgia 1332 Waiver Application

Dear Secretary Azar and Secretary Mnuchin:

Thank you for the opportunity to submit comments on Georgia's 1332 waiver application.

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 Departments to make the best use of the recommendations, knowledge and experience our organizations offer here.

While we support Georgia's plan to establish a reinsurance program, we strongly oppose the state's attempt to prohibit Georgians from choosing to enroll in coverage through Healthcare.gov, which if successful likely would reduce enrollment in comprehensive coverage and jeopardize quality and affordable healthcare coverage for patients with acute and chronic health conditions. The state's so-called "Georgia Access" Model would reduce the enrollment pathways now available to Georgians and dictate that individuals use an insurer or broker. These options, that the state hopes to make mandatory, are already widely available to Georgians, who are free to choose them absent a waiver. This proposal dramatically increases the risk of consumer confusion, creating a high likelihood that people will lose coverage and others will enroll in plans that are inadequate for their health needs. Our organizations urge the Departments not to approve the Georgia Access Model portion of this waiver.

Georgia Access Model

Georgia's application proposes to prohibit Georgians from choosing to enroll in coverage through the neutral Healthcare.gov platform and instead would require that people enroll directly through insurers or brokers. This policy will make it harder for patients to enroll in comprehensive, affordable healthcare coverage and our organizations oppose this change.

Impact on Coverage

The state's decision to fragment its market, while depriving Georgians of their most commonly used pathway to individual market coverage, makes it highly likely that some of the 450,000 Georgians who currently purchase comprehensive coverage through the marketplace will lose it. This could have a serious impact on the health of patients who are in the middle of treatment for a chronic or acute health condition and rely on regular visits with healthcare providers or daily medications to manage their conditions. Our patients cannot afford a sudden gap in care.

The state asserts that enrollment will increase, on net, by 25,000 due to "increased web-broker marketing" and the ability of individuals to shop for coverage "through multiple channels." These vague claims lack a reasonable basis and inexplicably ignore the current enrollment options available in the state's individual market. Web-brokers can and do market coverage to Georgia consumers today, and these entities can and do enroll Georgians in individual market coverage. As the application itself observes, about 20 percent of marketplace enrollees enrolled directly in 2020. Georgians do not need Georgia Access to take advantage of "multiple channels" of enrollment. All that Georgia Access does is eliminate the enrollment channel on which the majority of the state's individual market consumers have chosen to rely.

The application's attempt to explain why this reduction in choice will produce a net enrollment gain of 25,000 specifically also lacks a reasonable basis. To arrive at this figure, the state notes that the share of individual market enrollment in Georgia via private vendors has increased by about 4 percentage points a year from 2018-2020. By extending this trend to 2022, the state suggests there will be 33,000 additional private vendor enrollments, offset by an approximately 2 percent (8,000 people) decrease in marketwide enrollment during the transition. These projections suffer from fundamental defects.

First, the trend on which the state relies for its projections of total enrollment (the 4 percentage point yearly growth in private enrollments) does not describe changes in total enrollment. Rather, it describes changes in the *share* of enrollment via private vendors. There is no reason whatsoever to assume that a trend in the share of private enrollments would be predictive of changes in total enrollment in a waiver scenario, nor does the application even attempt to offer an explanation for why that might be the case.

(For example, if the state's application is approved, the share of private enrollments will jump from approximately 20 percent to 100 percent, in the absence of Healthcare.gov. This metric fails to a indicate the impact of the waiver on total coverage take-up.) This analysis is insufficient to support waiver approval.

Second, the trend on which the state is focused occurred *in the absence of the waiver*. The state does not, and presumably cannot, explain why, going forward, such growth will continue *only* if the waiver is implemented. Because the growth trend is not contingent on the waiver, it cannot be attributed to the waiver for purposes of evaluating federal law compliance.[1]

Georgia's assertion that only about 2% (8,000 enrollees) of the market will lose coverage under its proposal is also insufficient. The state claims that this projection "is based on experience seen in other states when transitioning" from the federal marketplaces. Yet recent marketplace transitions do not support this claim. For example, when Nevada transitioned from the federal marketplace to its own enrollment platform, a transition years in the making that by all accounts went smoothly, the state still saw an enrollment decline of 7%.[2] Georgia, for its part, seeks to initiate an unprecedented transition — likely occurring while the country continues to suffer from the pandemic — that is likely to place greater strain on state resources and current enrollees than what was experienced in these states. Under the circumstances, it is reasonable to expect enrollment declines in excess of those seen in Nevada and other states that have shifted enrollment platforms.

Patients will also lose access to features of Healthcare.gov that help to facilitate enrollment in quality and affordable healthcare coverage, further contributing to coverage losses. Currently, when Healthcare.gov screens individuals for eligibility for premium tax credits, it lets consumers know if they are eligible for Medicaid coverage and refers them to the state's Medicaid agency. Under the Georgia Access Model, brokers and other private entities would have no incentive to provide this kind of assistance and could be instead be motivated to enroll Medicaid-eligible individuals in skimpy plans that would not provide comprehensive coverage but for which they earn a commission. Additionally, Healthcare.gov can automatically re-enroll individuals who signed up for coverage last year but do not select a new plan into coverage for the following year. However, under the Georgia Access Model, patients would lose access to the auto-enrollment function of Healthcare.gov, which automatically re-enrolled 80,000 Georgians in healthcare coverage for 2020.[3] Our organizations are deeply concerned about these potential coverage losses.

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 QHPs alongside other types of plans that discriminate against people with pre-existing conditions and will not cover enrollees' medical expenses if they get sick. Indeed, it is a stated objective of Georgia's waiver for insurers to do exactly that. This 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. There is already evidence of misleading marketing related to short-term and other skimpy plans leading individuals to unwittingly enroll in coverage that lacks key patient protections.[4] This problem would likely worsen in Georgia under this proposal.

Healthcare.gov shows consumers all QHPs available in their area and does not favor certain plans over others. However, brokers who would be helping individuals through the enrollment process under the

Georgia Access Model would not have to show individuals all of their plan options and may receive larger commissions for certain plans over others that influence their recommendations to patients. Increasing the reliance on insurers and brokers will limit the ability of patients with chronic and acute health conditions to compare plan price and benefit design in an unbiased manner to choose the right plan for them and could ultimately result in harm to patients who become enrolled in sub-standard or inadequate insurance coverage that does not meet their needs. This failure to appropriately shield patients from risk is unacceptable.

Impact on Affordability

The state predicts that moving to enhanced direct enrollment with web brokers will bring down premiums. Unfortunately, the opposite could happen. The state's claims are premised on the assumption that the waiver will significantly increase enrollment. As discussed above, these assumptions are deeply flawed. Contrary to its analysis, 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 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.

In addition, the application fails to account for the costs to consumers of increased broker commissions. By forcing consumers to enroll via an insurer or broker, the Georgia Access Model necessarily will drive up the share of enrollments effectuated through these pathways. In the state's view, this should result in an increase in the total volume of broker commissions. Such commissions are, of course, paid for by increases in premiums. Yet Georgia fails to account for any increase in premiums due to these foreseeable costs.

Reinsurance

Reinsurance is an important tool to help stabilize health insurance markets. Reinsurance programs help insurance companies cover the claims of very high cost enrollees, which in turn keeps premiums affordable for other individuals buying insurance on the individual market. Reinsurance programs have been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D. A temporary reinsurance fund for the individual market was also established under the Affordable Care Act and reduced premiums by an estimated 10% to 14% in its first year.[5] A recent analysis by Avalere of seven states that have already created their own reinsurance programs through Section 1332 waivers found that these states reduced individual market premiums by an average of 19.9% in their first year.[6]

Georgia's proposal will create a reinsurance program starting for the 2022 plan year and continuing for five years. Based on the initial analysis commissioned by the state, this program is projected to reduce premiums by 10% in 2021 and increase the number of individuals obtaining health insurance through the individual market. This would help patients with pre-existing conditions obtain affordable, comprehensive coverage.

Georgia's proposal estimates that this reinsurance program will cost the state approximately $100 million, which will come from the state's general fund. As Georgia moves forward with allocating funding for this program, it is important that the state not do so by cutting funding for other public

health and coverage programs. This would diminish health and access to care for Georgians, undermining the core goals of a reinsurance program.

Public Comment

As many of our organizations in Georgia wrote in a letter to Governor Kemp on July 17, 2020,[7] a fifteen-day comment period is not sufficient to solicit meaningful comments on a proposal that would have such a substantial impact on access to care for patients in Georgia. A change of this significance should have been subject to a full comment period of at least 30 days to ensure that stakeholders, including the healthcare industry, patients and consumers and other interested parties, have adequate time to offer input to the state.

Since the state released the first, now outdated, version of its waiver application last year, COVID-19 has overwhelmed our healthcare system and highlighted the need for adequate and affordable health insurance coverage more than ever. If someone without health insurance contracts the COVID-19 virus, they may be forced to make the difficult decision to not be tested and treated due to fears about the cost of care. That puts all Georgians – particularly the people we represent – at risk. The state's proposals are not directly related to COVID-19 and not slated to take effect until 2022. The Departments should require Georgia to reopen a comment period of at least 30 days to allow additional time to facilitate public review of and input on these important proposals.

Additionally, although Georgia is required to include in its application a comprehensive description of the program it will use to implement the waiver, this critical information is lacking. While the state is clear that it wants to end Georgians' access to HealthCare.gov, the particulars of what will follow are omitted from the application. All the state offers is an outline of how it hopes to implement an unprecedented transition and promises that it "will develop" robust implementation plans in the future. This is insufficient to satisfy federal requirements and places an impermissible burden on consumers and stakeholders as they attempt to understand and provide input on this proposal.

Conclusion

Our organization believe that the Georgia Access Model withholds access to quality and affordable healthcare coverage for thousands of patients with serious and chronic health conditions. While we support Georgia's reinsurance program, we strongly urge the Departments to reject the Georgia Access Model portion of this 1332 waiver application.

Thank you for the opportunity to provide comments.

Sincerely,

American Lung Association
Alpha-1 Foundation
American Heart Association
American Liver Foundation
Arthritis Foundation
Cancer Support Community
CancerCare

Chronic Disease Coalition
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Leukemia & Lymphoma Society
Lutheran Services in America
Mended Hearts & Mended Little Hearts
National Alliance on Mental Illness
National Hemophilia Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Patient Advocate Foundation
National Psoriasis Foundation
Pulmonary Hypertension Association
Susan G. Komen
The AIDS Institute

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[1] Christen Linke Young and Jason Levitis, "Georgia's latest 1332 proposal continues to violate the ACA," September 1, 2020, The Brookings Institution. https://www.brookings.edu/research/georgias-latest-1332-proposal-continues-to-violate-the-aca/

[2] Nevada health insurance marketplace: history and news of the state's exchange. Louise Norris, HealthInsurance.org. June 11, 2020. Available at: https://www.healthinsurance.org/nevada-state-health-insurance-exchange/

[3] Christen Linke Young and Jason Levitis, "Georgia's latest 1332 proposal continues to violate the ACA," September 1, 2020, The Brookings Institution. https://www.brookings.edu/research/georgias-latest-1332-proposal-continues-to-violate-the-aca/

[4] Seeing Fraud and Misleading Marketing, States warn Consumers About Alternative Health Insurance Products. The Commonwealth Fund, Dania Palanker, JoAnn Volk, and Maanasa Kona. October 30, 2019. Available at; https://www.commonwealthfund.org/blog/2019/seeing-fraud-and-misleading-marketing-states-warn-consumers-about-alternative-health, and The Marketing of Short-Term Health Plans, The Robert Wood Johnson Foundation, January 31, 2019. Available at: https://www.rwjf.org/en/library/research/2019/01/the-marketing-of-short-term-health-plans.html

[5] American Academy of Actuaries, Individual and Small Group Markets Committee. *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes.* January 2017. Retrieved from https://www.actuary.org/files/publications/Acad_eval_indiv_mkt_011817.pdf.

[6] Avalere. *State-Run Reinsurance Programs Reduce ACA Premiums by 19.9% on Average.* March 2019. Retrieved from https://avalere.com/press-releases/state-run-reinsurance-programs-reduce-aca-premiums-by-19-9-on-average.

[7] Letter from the American Lung Association and Health Partners to Governor Kemp re: Section 1332 Waiver Application, July 17, 2020.