January 9, 2022

VIA ELECTRONIC SUBMISSION

The Honorable Xavier Becerra, Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Ave, SW
Washington, D.C. 20201

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

RE: Georgia Section 1332 State Innovation Waiver

Dear Secretaries Becerra and Yellen:

The National Health Law Program (NHeLP) is a public interest law firm working to advance access to quality health care and protect the legal rights of low-income and underserved people. We appreciate the opportunity to provide these comments on Georgia's Section 1332 State Innovation Waiver (Georgia § 1332 Application).

NHeLP recommends that the Department of Health & Human Services (HHS) withdraw its approval of Georgia § 1332 waiver, because it would impose a number of unlawful conditions on coverage and access to care for the marketplace and Medicaid populations.

We submitted comments during an earlier federal comment period that we wish to incorporate by reference. Those comments are available here. Rather than reiterate those prior comments, we are focusing only on providing new information in these comments.

We believe the Administration can terminate the waiver not just for its violation of statutory protections but also based on administrative and procedural grounds. The Department of Health and Human Services and Department of the Treasury ("Departments") have the authority to ask Georgia for further analysis under the relevant statute, federal regulations, and the waiver approval agreement the state signed. Letters requesting additional information were sent to Georgia on June 3 and July 30, 2021. Since Georgia has refused to provide updated information, HHS has the authority to terminate the agreement. Both the 1332 regulations and the terms of the waiver itself expressly list termination as a possible consequence.

Some of the current reasons additional information is critical before Georgia proceeds are outlined below.

Georgia's model will not enroll as many individuals as compared to enrollment without the waiver. Fewer Georgians would have health coverage if the "Georgia Access Model" takes effect. Thus, the waiver fails the "coverage guardrail" that 1332 waivers are required by law to meet.

In its application, Georgia painted a bleak view of the future of the marketplace and claimed that the waiver was necessary to stem enrollment losses. But the state's 2018 baseline projections are significantly lower than current enrollment. Georgia's marketplace enrollment is more than 180,000 higher in August 2021 than in 2018 — a roughly 50 percent increase. Further, with additional provisions enacted in the American Relief Plan Act (ARPA), more individuals are receiving greater assistance in obtaining marketplace coverage, further undermining Georgia's projections.

The state projected its plan would increase marketplace enrollment from about 366,000 in 2018 to 392,000 in 2023. Even if Georgia's waiver did generate those coverage gains, it would fall well short of the 549,000 individuals enrolled as of August 2021.

Georgia's analysis does not account for significant changes in federal law that increase enrollment. For 2021 and 2022, ARPA boosted the premium tax credit to reduce marketplace premiums across the board and extended eligibility to people with incomes above 400% FPL (Federal Poverty Line). While the enhancements are currently set to end in 2022, the Congressional Budget Office (CBO) predicts more people will stay enrolled in 2023, the year the Georgia Access Model would begin. Even if subsidies return to pre-ARPA levels in 2023, as many as 80% of Georgia's enrollees could still be eligible for zero- or low-cost plans. As noted by researchers, the presence of zero-premium plans substantially increases re-enrollment.[1] Thus recent federal policies would likely boost enrollment beyond Georgia's predictions and if the waiver were to proceed, many more people would be impacted by the loss of HealthCare.gov.

Further, the Families First Coronavirus Response Act included a "maintenance-of-effort" provision under which states, to get a higher federal matching percentage for Medicaid costs, must keep Medicaid-eligible people enrolled for the duration of the COVID-19 public health emergency. CBO anticipates the provision will begin to unwind in July 2022. As it does, some people with income now too high for Medicaid would likely qualify for assistance in the marketplace. Assuming the transfers between Medicaid and the marketplace works as it should, enrollment in marketplace coverage will again increase. Georgia's analysis does not account for this.

Georgia's analysis does not account for changes in federal rules that increase enrollment. CMS recently changed the length of the marketplace open enrollment period, providing additional time for individuals to enroll. A longer open enrollment period for HealthCare.gov gives people more time to enroll each year and has already contributed to a surge in marketplace enrollment.

Further, a recent rule change allows people with incomes at or below 150% FPL to enroll in marketplace coverage in any month starting in 2022, rather than needing to have a separate life event to qualify for a special enrollment period (SEP). In Georgia, about 160,000 uninsured adults have incomes between 100-150% FPL. Again, Georgia's projections do not account for these rule changes and are thus out-of-date.

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[1] McIntyre AL, Shepard M, Wagner M. Can Automatic Retention Improve Health Insurance Market Outcomes? [Internet]. National Bureau of Economic Research; 2021 Apr [cited 2021 Jun 21]. Report No.: w28630. Available from: https://www.nber.org/papers/w28630.

In addition to not addressing recent statutory and rule changes making it easier for individuals to enroll in marketplace coverage, Georgia would opt out of important federal investments that raise enrollment. The Biden Administration made a historic $100 million investment in nationwide marketing during the six-month emergency enrollment period in 2021, a contrast to the Trump Administration's $10 million in annual funding in prior years. The Biden administration has demonstrated its commitment to making people aware of affordable coverage in the marketplace. Delinking from HealthCare.gov means Georgia would no longer benefit from this investment. Forgoing government-funded advertising means Georgia can expect lower enrollment under its waiver as private advertising likely will not be of the same amount and scope.

Further, in 2021, HealthCare.gov navigators received a $70 million funding increase plus as additional $10 million to assist with the longer open enrollment period. Assisters are more likely than agents and brokers to report that their clients were previously uninsured, help with Medicaid or CHIP enrollment, perform public education and outreach activities, and help clients of color, people who have limited English proficiency, or people who lack internet at home. The Georgia Access Model opts out of this federal investment and does not establish any form of impartial, unbiased help. The result is that uninsured and underserved people would be less likely to find coverage.

Unlike brokers and insurers, navigators must – pursuant to federal regulation – focus on reaching hard-to-reach and underserved populations. They must also provide fair, accurate and unbiased information to consumers. In Georgia in particular, the Georgia Association for Primary Health Care targeted rural consumers, veterans, Latino consumers and other minority racial or ethnic groups, the self-employed, and women with children while the Georgia Refugee Health and Mental Health targeted refugee and international/limited English speaking populations.[2] A recent study examined changes in coverage before versus after the 80% cut in funding for the navigator program under the Trump administration, comparing across counties in federally facilitated marketplace states that had more versus fewer navigator programs prior to the cuts. Cuts to the navigator program were associated with drops in the coverage rate among lower-income adults, adults under

[2] Centers for Medicare and Medicaid Services. In-Person Assistance in the Health Insurance Marketplaces: Navigator Grant Recipients, 2019. Available from: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/assistance.

age 45, Hispanic adults, and adults who speak a language other than English at home.[3] Thus the Georgia Access Model would not only result in large scale coverage losses generally but likely would disproportionately impact people of color, limited English proficient individuals, and underserved individuals.

We are also concerned that eliminating HealthCare.gov and navigators will result in people enrolling in plans that do not provide comprehensive coverage. Private vendors and insurers are not subject to the same rules as HealthCare.gov navigators and often lure people into plans that earn companies higher profits but provide little care or contain expensive premiums and deductibles.

And the waiver could also have a detrimental impact on children and families. HealthCare.gov is designed to automatically let parents know if their children qualify for Medicaid or CHIP (PeachCare for Kids). As experience has shown throughout the past open enrollment periods, applying through HealthCare.gov identifies potential eligibility of adults in Medicaid and helps them enroll. HealthCare.gov is also essential in making sure that parents are covered. Healthy parents are better able to work and take care of their families and parents with health insurance are more likely to keep their kids enrolled in health coverage. Agents and brokers likely will not provide the same information, especially because they do not benefit financially from enrolling people in Medicaid and CHIP.

Georgia's waiver conflicts with recent Executive Orders on equity and health coverage. The Biden-Harris Administration has taken strong stands on enrolling eligible individuals into health coverage and advancing health equity. The Georgia Access Model would undermine both of these stated aims. Executive Order 13985 calls on federal agencies to review new and existing policies to assess whether they advance equity for marginalized and historically underserved communities. Georgia did not analyze the waiver's impact on equity, which should raise the Departments' level of scrutiny.

Executive Order 14009, on strengthening Medicaid and the Affordable Care Act, calls for an immediate review of all federal agency actions, with the goal of making coverage accessible and affordable to everyone. This includes policies that undermine protections for people with pre-existing conditions; waivers that may reduce coverage under Medicaid or

[3] Myerson R, Li H. Information Gaps and Health Insurance Enrollment: Evidence from the Affordable Care Act Navigator Programs [Internet]. Social Sciences Research Network; 2021 Nov. Available from: http://dx.doi.org/10.2139/ssrn.3966511.

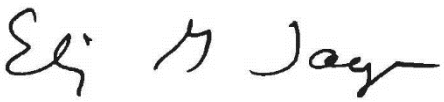
the ACA; policies that undermine the marketplace; policies that create unnecessary barriers to families attempting to access ACA coverage; and policies that may reduce the affordability of coverage. Georgia's waiver conflicts with each of these goals.

Conclusion

We appreciate the new comment period as the Departments assess whether to allow Georgia to continue forward with its Section 1332 waiver. As noted above as well as in our prior comments, we oppose the Georgia Access Model. Recent developments as well as Georgia's failure to respond to requests for additional analysis lead us to recommend the Departments withdraw their approval of Georgia's Section 1332 waiver.

Our comments include citations to supporting research, including direct links to the research. We direct Treasury and HHS to each of the studies we have cited and made available through active links, and we request that the full text of each of the studies cited, along with the full text of our comment, be considered part of the formal administrative record for purposes of the Administrative Procedure Act. If Treasury and HHS are not planning to consider these citations part of the record as we have requested here, we ask that you notify us and provide us an opportunity to submit copies of the studies into the record.

Thank you for the opportunity to provide out input on this proposed rule. If you have any questions please contact Mara Youdelman (youdelman@healthlaw.org).
Sincerely,



Elizabeth G. Taylor
Executive Director