



*Administrator*  
Washington, DC 20201

November 9, 2021

**VIA ELECTRONIC MAIL:** [ryan.loke@georgia.gov](mailto:ryan.loke@georgia.gov)

Grant Thomas  
Director  
Office of Health Strategy and Coordination  
Governor's Office of Planning and Budget  
2 Capitol Square, SW  
Atlanta, GA 30334

Dear Director Thomas:

This letter is in response to your letter dated August 26, 2021,<sup>1</sup> to the U.S. Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Departments). I am sending this letter on behalf of both Departments.

The Departments are committed to working in partnership with states on policies that improve health care coverage in their states. Through waivers under section 1332 of the Affordable Care Act (ACA), the Departments aim to assist states with developing health insurance markets that expand coverage, lower costs, and ensure that health care is a right available to all Americans. The Departments are also committed to fulfilling their duties to oversee and monitor any approved waiver to ensure that it does not reduce access to high quality, affordable coverage.<sup>2</sup>

As you know, on June 3, 2021, and July 30, 2021, the Departments sent the State of Georgia (the State) two letters<sup>3</sup> requesting an updated analysis to reflect recent changes in circumstances to determine ongoing compliance of the Georgia Access Model with the statutory requirements (referred to as the statutory "guardrails"). The State's analysis was originally due on July 3, 2021. When the State did not submit the requested updated analysis, the Departments sent the State a second letter on July 30, 2021, which provided the State an additional 30 days to comply with that request and submit an updated analysis to the Departments by August 29, 2021. The July 30, 2021, letter noted that the Departments may consider the State to be in violation of the

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<sup>1</sup> Georgia's letter in response to Departments, dated August 26, 2021, is available at: <https://www.cms.gov/files/document/1332-georgia-letter-cms-82621.pdf>

<sup>2</sup> The Departments requested a revised analysis of the Georgia Access Model as part of their responsibility to conduct oversight and monitoring, and in accordance with Georgia waiver specific terms and conditions (STCs) 7, 14, 15, and 17, 31 C.F.R. § 33.120(a)(1) and (f), and 45 C.F.R. § 155.1320(a)(1) and (f), to ensure that approved section 1332 waivers continue to meet the statutory guardrails.

<sup>3</sup> Departments' Letter Requesting Updated Georgia Analysis, dated June 3, 2021, is available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-Request-Updated-GA-Analysis-Letter.pdf>. Departments' Follow-up Letter to Georgia's July 2 Response Letter, dated July 30, 2021, is available at: <https://www.cms.gov/files/document/response-1332-ga-depts-follow-letter.pdf>.

Georgia waiver's specific terms and conditions (STCs) if the State did not provide the requested updated analysis. Georgia did not submit the requested updated analysis.

As previously stated, there have been changes in federal law and policies since the initial approval of the Georgia waiver on November 1, 2020, including the enactment of the American Rescue Plan Act of 2021 (ARP), as well as the adoption of Executive Order 13985 and Executive Order 14009. In light of these recent changes, the Departments are reviewing all section 1332 waivers for compliance with the guardrails.<sup>4</sup> We are evaluating the Georgia Access Model's compliance with the statutory guardrails in light of these changes in federal law and policy, many of which have increased enrollment in Georgia and nationally. For example, 8 million existing consumers had a new or updated plan selection for individual market plans after the implementation of the ARP's enhanced subsidies, including 356,487 consumers in Georgia.<sup>5</sup> Due to the ARP, Georgia consumers saw a 54 percent reduction in average monthly premiums after advance payments of premium tax credits (APTC), an average of \$49 per person per month in savings.<sup>6</sup>

Nationally, 12.2 million people were enrolled on HealthCare.gov and State-based Marketplaces in August, of which more than 2.8 million people signed up for affordable health insurance for the first time under the COVID-19 2021 Special Enrollment Period (SEP) from February 15, 2021 to August 15, 2021. In Georgia, 147,463 people signed up for Exchange coverage during the COVID-19 SEP—which is more than three times the number of Georgia consumers who signed up during the same time period in 2020.<sup>7</sup>

Furthermore, there have been significant investments in outreach, with \$100 million nationally for the COVID-19 SEP in plan year (PY) 2021,<sup>8</sup> and \$80 million in grant funding for Navigators in states with a Federally-facilitated Exchange (FFE) for PY 2022 (\$2.54 million in grant funding for three Navigator grantee organizations in Georgia for PY 2022) to serve the uninsured and underserved communities.<sup>9</sup> These investments are expected to continue or even increase in future years. The ARP, combined with the Administration's actions to increase funding for public outreach, marketing, and in-person assistance, are already increasing enrollment and reducing the cost of health care coverage for many who have been uninsured and for those currently receiving financial assistance. In addition, on October 1, 2021, the HHS Office of the Assistant Secretary for Planning and Evaluation (ASPE) published an issue brief which found that outreach and enrollment assistance play a crucial role in increasing enrollment and retention of consumers seeking health insurance.<sup>10</sup>

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<sup>4</sup> Thus far, there is no indication that reinsurance waivers are unable to continue to meet the guardrails. Therefore, the Departments do not intend to reevaluate Part I of the Georgia waiver plan, which establishes a state-based reinsurance program, at this time.

<sup>5</sup> See <https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid. In Georgia from the February 15 to August 15 time period, there were 41,138 plan selections in PY 2020 and 25,656 in PY 2019.

<sup>8</sup> See <https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency>. Also see <https://www.cms.gov/newsroom/press-releases/hhs-secretary-becerra-announces-reduced-costs-and-expanded-access-available-marketplace-health>.

<sup>9</sup> See <https://www.cms.gov/files/document/2021-navigator-grant-recipients.pdf>

<sup>10</sup> See ASPE issue brief here: <https://aspe.hhs.gov/reports/reaching-remaining-uninsured-outreach-enrollment>.

Taking into account the increased enrollment resulting from these changes in federal law and policy, the Departments remain concerned about the ability of the Georgia Access Model to demonstrate that it will satisfy the statutory guardrails and cover as many individuals as would have been covered without the waiver given changes in federal law and policy. More specifically, Georgia's earlier without-waiver baseline projections were based on assumptions about the amount of funding for marketing and outreach for the FFE that are no longer true. Increased subsidies as well as funding for FFE outreach and marketing could result in greater enrollment than was anticipated without the waiver, decreasing the number of uninsured individuals in Georgia. To the extent the private market is less motivated to invest in outreach because the uninsured population has declined, fewer new enrollees may be expected to take up coverage.

In addition, when Georgia applied for its waiver, the State acknowledged that some individuals would likely drop coverage in the transition to the Georgia Access Model but that increased enrollment attributable to private sector outreach would more than offset any transition-related coverage losses. The Departments remain concerned that, in light of recent changes in Georgia's individual health insurance market, there may no longer be sufficient increased enrollment to offset potential coverage losses. Assuming incidental coverage losses are proportionate to total enrollment, higher baseline individual market enrollment could increase the number of individuals expected to drop coverage during the transition. This could result in fewer individuals with coverage under the waiver than would have had coverage absent the waiver. Accordingly, the number of uninsured individuals in Georgia and the number of individuals who would enroll in coverage under the waiver are likely to be different than the numbers Georgia projected.

Absent the requested updated information from the State, the Departments are proceeding to review the continued compliance of the Georgia Access Model with the statutory guardrails set forth in section 1332(b)(1)(A)–(D) of the ACA. As such, we are writing to inform you that the Departments are opening a 60-day federal comment period to receive input from the public on the impact of changes in federal law and policy on the Georgia Access Model, as approved on November 1, 2020, and whether the Georgia Access Model continues to meet the guardrails in light of these changed circumstances. This comment period will provide stakeholders and the general public an opportunity to review and provide input on the impact of these and other changes such as on the ground implementation efforts that may affect the statutory-guardrails analysis.<sup>11</sup> This comment solicitation will be posted along with the state's waiver application and corresponding documents on the Centers for Medicare & Medicaid Services' (CMS) section 1332 website, and will be open to Georgia, stakeholders, and the public for comment from November 9, 2021 through January 9, 2022.<sup>12</sup>

Again, we invite you to demonstrate compliance with the STCs and submit the requested updated analysis before the close of this public comment period. We also remind the State that

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<sup>11</sup> See <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>. See GA STC 7 (Changes in Applicable Federal Laws) and GA STC 15 (Federal Evaluation), available at: [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_State\\_Innovation\\_Waivers-/1332-GA-Approval-Letter-STCs.pdf](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-/1332-GA-Approval-Letter-STCs.pdf). Also see 31 C.F.R. § 33.120(a)(1) and (f) and 45 C.F.R. § 155.1320(a)(1) and (f). Also see GA STC 14 and 17.

<sup>12</sup> See section 1332 website here: [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_State\\_Innovation\\_Waivers-](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-).

per 31 C.F.R. § 33.120(a) and 45 C.F.R. § 155.1320(a) and STC 6, the State must come into compliance with applicable federal laws, which includes implementation of new federal statutory requirements applicable to the Georgia Access Model. If any legislation is enacted during the comment period that would impact the individual health insurance market and the without-waiver analysis, such as eligibility or affordability changes for individual market coverage, any updated analysis should take account of that legislation.

We look forward to working with you as we work to ensure the residents of Georgia have quality, affordable health care coverage. Please send any questions regarding this request or official correspondence concerning the waiver to Lina Rashid at [Lina.Rashid@cms.hhs.gov](mailto:Lina.Rashid@cms.hhs.gov) or [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

Sincerely,



Chiquita Brooks-LaSure