Request for Comment on the Georgia Access Model

The Administration is committed to protecting and expanding Americans' access to quality, affordable health care, to making the health care system easier to navigate, and to meeting the health care needs created by the COVID-19 public health emergency (PHE). Through waivers under section 1332 of the Affordable Care Act (ACA), the U.S. Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Departments) aim to assist states with developing health insurance markets that expand coverage, lower costs, and ensure that health care is a right accessible to all Americans.

As noted in the Departments' June 3, 2021 and July 30, 2021 letters to the State of Georgia, there have been changes in federal law and policies since the initial approval of the Georgia section 1332 waiver on November 1, 2020, including enactment of the American Rescue Plan Act of 2021 (ARP) and the adoption of Executive Order 13985[1] and Executive Order 14009.[2] In light of these recent changes, the Departments are reviewing all section 1332 waivers for compliance with the statutory guardrails.[3] The Departments have determined that Part II of the Georgia waiver, the Georgia Access Model, approved on November 1, 2020, requires further evaluation based on recent changes in federal law and other circumstances, including those identified below, that raise serious questions about whether the assumptions the State made with regard to Part II of Georgia's waiver plan are still valid.

The Departments are proceeding to review the continued compliance of Part II of the Georgia waiver with the statutory guardrails set forth in section 1332(b)(1)(A)–(D) of the ACA. As such, we 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 Part II of the Georgia waiver, as approved on November 1, 2020, and whether the Georgia Access Model meets the statutory guardrails. This comment period provides stakeholders and the general public an opportunity to review and provide input on the impact of these recent changes on the Georgia Access Model, which will help inform the Departments' further evaluation of the Georgia Access Model and whether it continues to meets the statutory guardrails in light of these and any other changes in law and policy.[4]

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[1] On January 20, 2021, the President issued the Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, directing the federal government to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Executive Order 13985 directs HHS to assess whether, and to what extent, its programs and policies perpetuate systematic barriers to opportunities and benefits for people of color and other underserved groups. See https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

[2] This was followed by Executive Order 14009, Strengthening Medicaid and the Affordable Care Act, under which the Departments were directed to review all agency actions to protect and strengthen the Affordable Care Act. See https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/.

[3] 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.

[4] 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. 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.

We request comment on whether and how the changes in law and policy, such as changes in federal law (for example, the ARP), and changes in policy (for example, the Special Enrollment Period (SEP) provided in response to the COVID-19 PHE, and the recently increased budget for outreach, marketing, and Navigators for the Federally-facilitated Exchanges (FFEs)) influence the Georgia Access Model's baseline for the waiver and the relationship between the baseline and with-waiver scenarios, as discussed in more detail below in Appendix A, or impact whether the Georgia Access Model complies with the statutory guardrails. Commenters may also wish to consider a recent HHS Office of the Assistant Secretary for Planning and Evaluation (ASPE) issue brief, which examined evidence with respect to factors affecting enrollment in health coverage among uninsured populations, barriers faced by individuals trying to enroll in health coverage, and the impacts of various outreach strategies and consumer assistance on helping uninsured people gain coverage.[5]

In particular, the Departments request comments, ***including any supporting data or analysis***, on the following:

- The impact of the changes in federal law and policy on the Georgia Access Model's compliance with the statutory guardrails.
- The impact of the changes in federal law and policy on coverage, as well as the comprehensiveness of such coverage, for individuals who are low-income, have high health care costs, represent underserved or vulnerable populations, are older adults, people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality in terms of compliance with the statutory guardrails.[6]
- In light of changes in federal law and policy, the continued validity of data or other assumptions from the waiver application that the Departments should consider as part of their evaluation of the Georgia Access Model's continued compliance with the statutory guardrails. (Note: Should legislation that impacts the individual health insurance market (such as eligibility or affordability changes for individual market coverage) pass during this comment period, please also comment on any potential impact to the statutory guardrails in light of such legislation.)
- Any considerations with regard to on-the-ground implementation and coordination efforts, past implementation experience, or other operational or enrollment factors the Departments should consider as part of the Departments' evaluation, in light of changes in federal law and policy, of the Georgia Access Model's continued compliance with the statutory guardrails.

[5] See ASPE issue brief here: https://aspe.hhs.gov/reports/reaching-remaining-uninsured-outreach-enrollment.

[6] These groups include individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-orderadvancing-racial-equity-and-support-forunderserved-communities-through-the-federalgovernment/.

This comment solicitation will be posted along with the State's waiver application and corresponding documents on CMS's section 1332 website and is open for comment from November 9, 2021 through January 9, 2022.[7] Please submit comments to stateinnovationwaivers@cms.hhs.gov and include "Georgia Access Model section 1332 waiver comments" in the subject heading. Please include your name, organization (if any), and email address with the comments.

Commenters may wish to refer to the following background documents:

- Waiver Application: Georgia Section 1332 State Innovation Waiver (10/9/20) (PDF)
- Correspondence with Georgia:
  - Letter Requesting Updated Georgia Analysis (6/3/21) (PDF)
  - Response Letter from Georgia (7/2/21) (PDF)
  - Follow-up Letter to Georgia's July 2 Response Letter (7/30/21) (PDF)
  - Second Response Letter from Georgia (8/26/21) (PDF)
  - Letter to Georgia on Start of 60-day Comment Period
- Reaching the Remaining Uninsured: An Evidence Review on Outreach and Enrollment (10/1/21)
- Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (1/20/21)
- Executive Order on Strengthening Medicaid and the Affordable Care Act (1/28/21)
- 2021 Special Enrollment Period in Response to the COVID-19 Emergency (1/28/21)
- 2021 Special Enrollment Period Access Extended to August 15 on HealthCare.gov for Marketplace Coverage (3/23/21)
- $80 Million Funding Opportunity for Navigators in States with a Federally-Facilitated Marketplace (6/4/21)
- 2021 CMS Navigator Cooperative Agreement Awardees (8/27/21)
- American Rescue Plan Act of 2021

Background on Section 1332 Waivers and Georgia Section 1332 Waiver:
Section 1332 of the ACA provides the Secretary of HHS and the Secretary of the Treasury (collectively, the Secretaries) with discretion to approve a State's request to waive specific provisions of the ACA (a State Innovation Waiver or section 1332 waiver) only if the Secretaries determine that the State's waiver application meets certain procedural requirements specified in regulation and the Departments determine that the waiver meets certain statutory requirements (the "guardrails"): (1) the waiver will provide coverage that is at least as comprehensive as the coverage provided without the waiver; (2) it will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; (3) it will provide coverage to at least a comparable number of residents as without the waiver; and (4) it will not increase the federal deficit.

On November 1, 2020, the Secretaries approved Georgia's section 1332 waiver plan, effective January 1, 2022, through December 31, 2026, that consists of two parts.[8] In Part I, Georgia requested a waiver of the ACA requirement for the individual market single risk pool in section

[7] See section 1332 website here: https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-
[8] The Georgia section 1332 waiver approval package is available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-/1332-GA-Approval-Letter-STCs.pdf.

1312(c)(1) as necessary in order to implement a Reinsurance Program for up to five years beginning with PY 2022. In Part II, Georgia requested a waiver of certain Exchange requirements in section 1311 of the ACA to implement and operate the Georgia Access Model, which would begin in PY 2023. Although the waiver plan was approved in November 2020, the Georgia Access Model has not yet been implemented, and would begin in 2023 consistent with the terms of the waiver plan.

When Georgia submitted its waiver request, the State indicated it was experiencing a substantial decline in enrollment through the FFE on a year-by-year basis. Yet data from the State's own application demonstrated that the FFE was still playing a significant role in getting people coverage, as Georgians were using it to enroll in coverage.[9] Unsubsidized enrollment dropped by 72 percent (approximately 150,000 individuals) between 2016 and 2019 in Georgia.[10] In addition, in 2019 the State had one of the highest uninsured rates in the country at 13.4 percent (1.39 million people) across the State.[11] According to the State's application, over half of the uninsured (795,000 people) in Georgia had household income between 100 percent and 400 percent of the Federal Poverty Level (FPL) and would have been eligible for federal subsidies; however, these consumers were not enrolling in subsidized coverage through the FFE. These data points were a core part of the State's actuarial analysis for its baseline without-waiver scenario and the population that the State was trying to address through its waiver plan.[12]

Under Part I, Georgia is implementing a state reinsurance program for up to five years beginning with PY 2022.[13] Under Part II, the Georgia Access Model, the private sector would provide the front-end functions for consumer outreach, customer service, plan shopping, selection, and enrollment and would leverage incentives that already exist in the market today. Plans would no longer be displayed or otherwise available on HealthCare.gov for one-stop shopping, eligibility determinations, or plan selection, and there would be no State Exchange. Instead, the consumer would be connected to a state website, where they would see a list of multiple, privately operated websites linking to approved issuers and web-brokers available to assist with the application and enrollment processes. Consumers in Georgia will continue to be eligible to receive federal subsidies. Georgia will validate eligibility information and determine if an applicant is eligible for QHPs, advance payments of premium tax credits (APTC), and cost-sharing reductions (CSRs). The State will send that information to CMS, which will continue to issue the applicable APTC to carriers on behalf of qualified individuals, and to the Internal Revenue Service (IRS), which will continue to administer the reconciliation of APTC on individual tax returns.

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[9] Georgia's state application notes that in 2019 450,000 individuals selected a plan through the FFE. See pg. 7 here: https://medicaid.georgia.gov/document/document/modified-1332-waiver/download

[10] U.S. Census Bureau, 2019 ACS 1-year Estimates, Table S2701. See https://data.census.gov/cedsci/table?q=S2701&tid=ACSST1Y2019.S2701.

[11] U.S. Census Bureau, 2019 ACS 1-year Estimates, Table S2701. See https://data.census.gov/cedsci/table?q=S2701&tid=ACSST1Y2019.S2701.

[12] As detailed further below, there have been recent changes in circumstances that have increased enrollment through the Georgia FFE such that the Departments are reevaluating the baseline actuarial analysis for the Georgia Access Model and whether the Georgia Access Model continues to meet the statutory guardrails.

[13] 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.

Outreach efforts under the Georgia Access Model, starting January 1, 2023, will be provided only through the private sector—neither the State nor the FFE would fund outreach or marketing efforts any longer. No information is currently available about the amount of private-sector funding that would be spent on outreach and marketing under the Georgia Access Model.

Recent Changes in Federal Law and Analysis

The ARP, enacted in March 2021, temporarily expanded eligibility for, and increased the generosity of, the ACA's Premium Tax Credits (PTC) through plan year 2022, enabling previously ineligible consumers to qualify for help paying for health coverage and increasing assistance to eligible individuals already enrolled in Exchange plans. These actions lowered the cost of health care coverage for millions of Americans. Further, the ARP's enhanced assistance has changed the incentives to seek coverage for uninsured consumers across the country. In light of recent increases in enrollment in individual health insurance coverage through Exchanges, it is possible that, when the Georgia Access Model begins in 2023, Exchange enrollment will be higher than when the State applied for the waiver. These new enrollees, like the existing enrollees, would be subject to a transition to a new system. The Departments also anticipate that the new enrollment incentives created by the ARP enhanced subsidies could potentially change market dynamics and reduce incentives for private sector entities to enroll uninsured consumers, as there will be a smaller base of uninsured consumers to enroll, which could impact the State's assumptions about coverage gains.

The ARP-enhanced subsidies, combined with Administration actions to increase funding for outreach, marketing, and in-person assistance, are already increasing enrollment and reducing the cost of health care coverage for many who are uninsured and those currently receiving financial assistance. The changes highlighted in Appendix A are likely to increase enrollment through the Exchange in Georgia and, as noted, in some cases have already increased enrollment. A recent study found that government advertising increases overall enrollment, which in turn enhances welfare. That same study also found that *private* advertising by individual insurers does not similarly result in increased enrollment overall.[14] Researchers have also found that the effects of outreach on increasing health insurance coverage persist beyond a single plan year. For example, a recent study of Internal Revenue Service (IRS) outreach (in which the IRS sent informational letters to uninsured taxpayers) found that after two years, coverage among outreach recipients remained approximately 0.7 percentage points higher relative to coverage among those who did not receive outreach.[15] Accordingly, the Departments believe that the increased funding for outreach and marketing is likely to result in greater enrollment, and a decrease in the number of uninsured individuals in Georgia that were not taken into account in Georgia's earlier projections and assumptions.

[14] Private advertising serves to increase an insurer's share of enrollment without increasing total enrollment. See, Naoki Aizawa, You Suk Kim, "Public and private provision of information in market-based public programs: evidence from advertising in health insurance marketplaces." Revised April 2021, available at http://www.nber.org/papers/w27695.

[15] At its peak immediately following the outreach, coverage among outreach recipients was 1.5 percentage points higher relative to those who did not receive the outreach. See, Jacob Goldin, Ithai Z Lurie, Janet McCubbin, "Health Insurance and Mortality: Experimental Evidence from Taxpayer Outreach, The Quarterly Journal of Economics," Volume 136, Issue 1, February 2021, Pages 1–49, available at https://academic.oup.com/qje/article/136/1/1/5911132.

Additionally, when Georgia submitted their waiver request, Georgia hypothesized that without competition from HealthCare.gov, the private sector would be incentivized to invest more towards these efforts than the FFE was investing (which at the time was $10 million in outreach nationally[16]). Because the private sector outreach efforts under the waiver were expected to exceed FFE outreach absent the waiver, the Georgia Access Model was projected to increase individual market enrollment relative to the without-waiver scenario. As such, it is unclear if, in the updated with-waiver scenario, the private market's outreach efforts under the Georgia Access Model, where there would be no FFE investment, would be comparable to FFE outreach efforts that would take place in the updated without waiver-baseline scenario. Nationally, the federal government spent $100 million for outreach for the SEP for COVID-19,[17] and these investments are expected to continue and even increase in future years. In addition, the federal government awarded $80 million in grant funding to FFE Navigators for PY 2022,[18] and expects to continue those investments for Navigators and outreach in the years ahead.

Appendix A: Changes in Federal Law and Policy

- *Changes in Federal Law*: As noted above, the ARP made numerous changes to the ACA to expand access to health insurance coverage and lower costs for consumers and, therefore, is expected to result in increased enrollment. These changes will allow historically uninsured communities to access coverage, thereby improving opportunities to obtain affordable health care coverage during and beyond the COVID-19 pandemic. Specifically, the ARP:
    - Removes the 400 percent FPL cap on household income for determining PTC eligibility, so that households with incomes higher than 400 percent of FPL may also qualify for PTC (for 2021 and 2022 coverage years);
    - Updates the PTC applicable percentage table, which defines what percentage of a household's income is expected to be paid toward a benchmark health insurance premium (for 2021 and 2022 coverage years), thereby increasing PTC and lowering many consumers' share of premium costs for plans purchased on the Exchanges;
    - Changes how household income is counted for households that receive unemployment compensation (UC) for 2021 so that if the taxpayer receives UC for 2021, the household may be eligible for a PTC covering the entire premium cost for certain plans purchased through the Exchanges, and that taxpayer's household could also qualify for CSRs (including households with income below 100 percent FPL in states that did not expand Medicaid);
    - In Georgia, the enhanced subsidies provided by the ARP have encouraged more consumers to sign up for or update their individual market plans with the Georgia FFE. According to the 2021 Final Marketplace Special Enrollment Report,

[16] See https://www.cms.gov/newsroom/fact-sheets/federal-health-insurance-exchange-2020-open-enrollment.
[17] 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.
[18] See https://www.cms.gov/newsroom/press-releases/biden-harris-administration-quadruples-number-health-care-navigators-ahead-healthcaregov-open.

nationally, 8 million existing consumers had a new or updated plan selection after the implementation of ARP's enhanced subsidies, including 356,487 consumers in Georgia.[19] Due to the ARP, Georgia consumers saw a 54 percent reduction in average monthly premiums after APTC, or an average of $49 per person per month in savings.[20]

- *COVID-19 Special Enrollment Period (SEP)*: The 2021 Executive Order on Strengthening Medicaid and the ACA[21] directed the Secretary of HHS to consider establishment of an SEP. From February 15, 2021, through August 15, 2021, HHS made the COVID-19 SEP available in states with Exchanges using the HealthCare.gov platform (including Georgia), and more than 2.8 million people newly signed up for affordable health insurance under the COVID-19 SEP. With the gains made during the SEP, there are now a record-breaking 12.2 million people enrolled in coverage through the federal and state Exchanges. In Georgia, the COVID-19 SEP from February 15, 2021 to August 15, 2021 also helped increase enrollment in the individual market with 147,463 people signing up for Exchange coverage—which is more than three times the number of Georgia consumers who signed up with a SEP during the same time period in 2020 and more than five times the number in 2019.[22]
- The COVID-19 SEP also attracted a more diverse group of consumers to enroll in Exchange coverage in HealthCare.gov states. Among consumers who attested to a race or ethnicity, 15 percent identified as African American, compared to 9 percent and 11 percent in 2019 and 2020, respectively. The percentage of consumers who self-reported as Hispanic/Latino increased to 19 percent, from 16 percent in 2019 and 2020.[23]

- *Increased Federal Outreach for Marketing/Navigators*: When the Departments approved Georgia's waiver, federal funding was limited to $10 million nationally for the FFE Navigator program[24] and $10 million nationally for outreach and marketing.[25] Under the current Administration, Navigator funding and outreach and marketing funding have been substantially increased. Specifically, CMS announced $50 million for outreach and marketing for the COVID-19 SEP[26] and an additional $50 million to further bolster the COVID-19 SEP campaign and promote the lower premiums under the ARP for PY 2021.[27] CMS expects to spend another $150 million nationally during the upcoming open enrollment period that starts on November 1, 2021 and runs through January 15, 2022. Furthermore, CMS awarded $80 million in grant funding to 60 Navigator awardee organizations in states with an FFE for PY 2022. This represents an eight-fold increase in

[19] See https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf
[20] Ibid.
[21] See https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/
[22] See https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf
[23] See https://www.hhs.gov/sites/default/files/2021-sep-final-enrollment-report.pdf
[24] See https://www.cms.gov/newsroom/press-releases/cms-announces-new-funding-opportunity-announcement-federally-facilitated-exchange-navigator-program
[25] See https://www.cms.gov/newsroom/fact-sheets/federal-health-insurance-exchange-2020-open-enrollment
[26] See https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency
[27] See https://www.cms.gov/newsroom/press-releases/hhs-secretary-becerra-announces-reduced-costs-and-expanded-access-available-marketplace-health

funding from the previous year.[28] In Georgia there will be three Navigator grantees receiving a total of $2.54 million in Navigator grant funding for PY 2022. These investments in the FFE Navigator program and outreach are expected to continue in future years.

[28] See https://www.hhs.gov/about/news/2021/04/21/hhs-announces-the-largest-ever-funding-allocation-for-navigators.html; https://www.cms.gov/newsroom/press-releases/cms-announces-additional-navigator-funding-support-marketplace-special-enrollment-period; https://www.hhs.gov/about/news/2021/08/27/biden-harris-administration-quadruples-number-health-care-navigators-ahead-healthcare-open-enrollment-period.html; https://www.cms.gov/files/document/2021-navigator-grant-recipients.pdf