

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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PLANNED PARENTHOOD		)
SOUTHEAST, INC., <i>et al.</i> ,		)
		)
Plaintiffs,		)
		)
v.		)
		)
XAVIER BECERRA, <i>et al.</i> ,		)
		)
Defendants,		)
		)
and		)
		)
STATE OF GEORGIA,		)
		)
Intervenor-Defendant.		)
<hr/>		)

Civil Action No. 1:21-cv-00117 (JEB)

**JOINT STATUS REPORT**

Pursuant to the Court’s minute order of May 11, 2022, the parties respectfully submit this status report.

As the Court is aware, on April 29, 2022, Federal Defendants advised Georgia that implementation of the Georgia Access Model would be suspended effective July 28, 2022, unless Georgia submitted a suitable corrective action plan or a written challenge to the agencies’ determinations by that date. *See* ECF No. 29, ¶ 5. Accordingly, this case has been stayed until September 8, 2022, with the parties to file periodic status reports. *See* Minute Order (May 11, 2022).

On July 27, 2022, Georgia submitted a written challenge to the agencies’ determinations in their April 29, 2022 letter. Georgia’s written challenge is attached hereto as Exhibit A.

On August 9, 2022, Federal Defendants responded to Georgia’s written challenge, upholding its determination that the Georgia Access Model is to be suspended, with the suspension

to take effect on August 9, 2022. The Federal Defendants' response to Georgia is attached hereto as Exhibit B.

In their next status report, which the parties will submit on or before September 8, the parties will make proposals for how to proceed with this case, including a schedule for any amended pleadings and/or briefing.

Dated: August 11, 2022

Respectfully submitted,

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Principal Deputy Assistant Attorney General  
Civil Division

ERIC B. BECKENHAUER  
Assistant Branch Director

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# Exhibit A



STATE OF GEORGIA  
OFFICE OF THE GOVERNOR

July 27, 2022

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services

Dear Administrator Brooks-LaSure:

This letter is in response to your letter dated April 29, 2022, in which the U.S. Department of Health and Human Services (HHS) and U.S. Department of Treasury (collectively, “the Departments”), stated that they would suspend implementation of Part II of Georgia Access unless Georgia submitted either a corrective action plan or a written challenge to the Departments’ determinations prior to July 28, 2022. This letter is Georgia’s written challenge.

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On March 27, 2019, Governor Brian P. Kemp signed Senate Bill 106, the Patients First Act into law. The Act grants the State of Georgia broad authority to submit and implement a section 1332 waiver in a manner consistent with state and federal law. Georgia then spent over a year exhaustively working with the Departments on Georgia’s proposed section 1332 waiver, Georgia Access. The Departments’ robust evaluation period included, among other things, six public hearings, two state public comment periods, and two federal public comment periods. In a November 1, 2020 letter, the Departments approved the waiver and explained in detail why the waiver satisfied the statutory guardrails.

The Georgia Access waiver consists of two parts. In Part I, Georgia received a waiver to implement a Reinsurance Program for up to five years beginning with plan year (“PY”) 2022. In Part II, Georgia received a waiver that allows the state to transition the individual market from the federal exchange to a new model. The waiver allows private sector entities to provide the front-end consumer shopping experience and enrollment operations with the state providing back-end operations to handle eligibility determinations and enrollment reconciliation.

In particular, Georgia and the Departments shared the view that Part II of the waiver was an innovative, market-driven model designed to address the unique challenges facing Georgians in accessing healthcare coverage. For many Georgians, HealthCare.gov is difficult to navigate. That

is why, despite offering billions in federal premium tax credits over the years for people seeking insurance through that portal, almost one million Georgians eligible for subsidies remained uninsured. Part II of Georgia Access was developed to ensure that those Georgians receive an improved consumer experience and can shop for an affordable plan that meets their needs—all while incentivizing the private market to target the uninsured who have been left behind by HealthCare.gov. Indeed, Part II of Georgia Access will put more affordable, quality insurance coverage within reach of consumers in our state than the existing one-size-fits-all federal solution. It will also create an enhanced consumer experience with private-sector incentives and marketing for consumers to shop, compare, and enroll in insurance through a more user-friendly experience.

After the Departments issued that approval on November 1, 2020, Georgia began working in good faith with the Centers for Medicare & Medicaid Services (“CMS”) to implement both parts of the waiver. Georgia relied on that approval and made substantial investments toward that shared goal. Georgia conducted extensive outreach to carriers to bring them into the market and also engaged Enhanced Direct Enrollment (“EDE”) vendors who expressed their commitment to participating under the waiver. Over the last twenty-one months, more than twenty private-sector organizations collaborated with the State and made their own investments in the new program. On Part II alone, Georgia has spent \$31 million and thousands of hours of staff time to prepare for implementation in PY 2023.

The Departments’ support for Part I of Georgia Access remains unchanged. But the Departments’ support for Part II and the state’s efforts toward implementation abruptly changed on June 3, 2021. Without warning, the Departments sent Georgia a letter claiming that “changes in both health care priorities and policies, as well as federal law” required Georgia to submit updated analysis of the already-approved waiver. It was obvious from the start, however, that the Departments were merely reopening the waiver’s application and approval process with the goal of eliminating the Part II of Georgia Access altogether before its 2023 implementation—an effort that started just seven months after the Departments unequivocally approved the program.

The Departments have asserted two bases for their threatened suspension of Part II Georgia Access: (1) Georgia’s alleged failure to comply with the waiver’s specific term and condition (STC) 15 when it did not provide the Departments an extensive post-approval actuarial analysis; and (2) the waiver allegedly no longer meets the statutory guardrail that it will provide coverage to at least a comparable number of residents without the waiver (the “statutory coverage guardrail.”). Neither contention has merit nor provides any basis to suspend implementation of the Part II of Georgia Access.

**I. There is no basis for suspending Part II of Georgia Access.**

**A. Georgia has complied with the STCs because the Departments had no authority to ask for additional actuarial information.**

The Departments’ first contention is that “the State has materially failed to comply with its section 1332 waiver’s specific terms and conditions (STCs) by repeatedly not providing the Departments with the information requested as part of our oversight and monitoring authority.” *See*

Administrator Brooks-LaSure Letter to Georgia pg. 2 (April 29, 2022) (“Suspension Letter”). In particular, the Departments had sought to impose on Georgia the considerable undertaking of redoing and updating the entire actuarial and economic analysis that supported its waiver application. This would be an enormous task. The Departments demanded extensive analysis supported by actuarial certifications—certifications that the Departments themselves did not conduct for their own approval reconsideration. *See infra* §I.B. The demand included dozens of elements with which the Departments wanted Georgia to comply, which the Departments knew would take at least several months to complete and yet they gave Georgia just 30 days to complete—an unrealistic deadline by any account.

Specifically, the Departments contend that Georgia’s failure to produce this information violated STC 15. *See* Suspension Letter pg. 7. But as Georgia previously explained, the Departments’ reliance on STC 15 is misplaced. STC 15 refers to “oversight of an approved waiver,” which plainly contemplates ongoing monitoring by the Departments *once a waiver has gone into force*. That is, once the waiver has taken effect, the Departments may request information to evaluate how the waiver is working and to ensure it continues to meet the statutory guardrails. STC 15 makes little sense in the context of a waiver that has already been approved but is yet to be implemented (as here); there is nothing new for the state to report beyond the materials already submitted in connection with the original approval. Any request for additional information before implementation cannot be to “monitor” or “evaluate” the waiver because there is nothing yet to “monitor” or “evaluate.” This means the Departments’ requests can only be categorized as an attempt to reopen and reconsider the initial approval. But the STCs do not give the Department authority to reopen or reconsider the waiver at this stage.<sup>1</sup>

Even if the STCs authorized the Departments’ request as a procedural matter, there was no substantive reason for the request in the first place. The request claimed that “changes in federal law and policies since the initial approval of the Georgia waiver on November 1, 2020” spurred the Departments to “review[] all section 1332 waivers for compliance with the guardrails.” Administrator Brooks-LaSure Letter to Georgia pg. 2 (July 30, 2021). The Departments invoked STC 7, which provides a mechanism for keeping the waiver in “compliance with changes to existing applicable federal statutes enacted by Congress or applicable new statutes enacted by Congress.” None of the Departments’ cited authorities can justify a request for additional information under this provision.

The letters pointed to Executive Order 13985, entitled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” Executive Order 14009, entitled “Strengthening Medicaid and the Affordable Care Act,” and the new administration’s funding increase for the federal Navigator program. These executive actions obviously did not qualify

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<sup>1</sup> The Suspension Letter makes clear that the Departments are asserting a violation of STC 15 itself. Though the Departments refer to 31 C.F.R. §33.120(f) and 45 C.F.R. §155.1320(f), STC 15 incorporates those regulations as part of its ongoing oversight responsibilities once the waiver is in effect. And the Departments’ apparent claim that they can effectively reopen the waiver approval process would render large portions of the carefully drafted STCs, 31 C.F.R. §33.120, and 45 C.F.R. §155.1320 little more than surplusage, as Georgia has previously explained. *See* Georgia Letter to Administrator Brooks-LaSure (Aug. 26, 2021).

because they are not laws “enacted by Congress.” Executive pronouncement cannot override the STCs’ unambiguous provision that only changes in federal *law* are relevant to the Department’s evaluation of the Model’s compliance with the statutory guardrails. *See, e.g., Am. Hist. Ass’n v. Nat’l Archives & Recs. Admin.*, 516 F. Supp. 2d 90, 108-111 (D.D.C. 2007) (executive orders cannot override existing regulatory frameworks). And, in any event, executive orders are merely broad, aspirational pronouncements that cannot provide a reasoned basis to question CMS’s careful findings and conclusions regarding Part II of Georgia Access’s compliance with the ACA guardrails. *See, e.g., California v. Bernhardt*, 472 F. Supp. 3d 573, 600-01 (N.D. Cal. 2020) (“While the Executive branch holds the power to issue executive orders, an agency cannot flip-flop regulations on the whims of each new administration. The APA requires reasoning, deliberation, and process.”); *New York v. U.S. Immigr. & Customs Enf’t*, 466 F. Supp. 3d 439, 449 (S.D.N.Y. 2020) (“misguided reliance on [an] Executive Order” is “no rationale” for a “consequential decision”). If that were not enough, the cited executive orders expressly disclaim any intent to have the force or effect of law. *See* Executive Order 13985 §11(a)(i) (Jan. 20, 2021) (“Nothing in this order shall be construed to impair or otherwise affect the authority granted to an executive department or agency, or the head thereof.”); *id.* §11(b) (“This order shall be implemented consistent with applicable law.”); *id.* §11(d) (“This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.”); Executive Order 14009 §§5(a)(1), (b), (c) (Jan. 28, 2021) (same). The one statute that the Departments did reference—the American Rescue Plan Act of 2021 (“ARP”)—fares no better. The ARP provisions expire before Part II of Georgia Access is even implemented in PY 2023. *See* American Rescue Plan Act of 2021 §9661 (March 11, 2021) (temporarily expanding premium tax credits in 2021 and 2022) (codified at 26 U.S.C. §§36B(b)(3)(a)(iii), (c)(1)(E)). And as we previously explained, the Congressional Budget Office estimates that the ARP’s provisions will have no impact on enrollment levels by 2023.<sup>2</sup> The Departments try to get around that problem by offering unsubstantiated speculation about the ARP’s potential, later effects on the insurance market due to “inertia in coverage selections” and “potentially chang[ing] market dynamics.” But STC 7 applies to the Model’s “compliance” with amendments to existing federal laws or new federal laws—it does not authorize reopening of an approved waiver to consider the speculative effects of hypothetical future changes in the insurance market.

In sum, STC 15 does not authorize the Departments to request additional information before Part II of Georgia Access goes into effect and, even if it did, there was no valid basis for demanding the requested information. Georgia not responding to these burdensome, unnecessary, unjustified, and unrealistic requests cannot be a basis for suspending the Georgia Access Model.

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<sup>2</sup> Reconciliation Recommendations of the House Committee on Ways and Means | Congressional Budget Office (cbo.gov).



**B. The Georgia Access Model complies with the statutory coverage guardrail.**

The Departments' second contention is that Part II of Georgia Access no longer "meet[s] the statutory requirement that it will provide coverage to at least a comparable number of residents as without the waiver," Suspension Letter pg. 2, *i.e.*, the statutory coverage guardrail. As with information requests, the Departments have no authority to reopen, reconsider, or suspend an approved waiver before it goes into effect. The STCs and regulations contemplate the Departments monitoring the waiver's compliance with the statutory guardrails once the waiver is implemented. *See, e.g.*, Administrator Verma's Letter to Georgia pg. 1 (Nov. 1, 2020) ("Approval Letter") ("Georgia will *implement* the Georgia Access Model beginning with PY 2023." (emphasis added)); 31 C.F.R. §33.120(b)(1) ("The terms and conditions of an approved section 1332 waiver will provide that the State will perform periodic reviews of the *implementation* of the section 1332 waiver." (emphasis added)). The Departments' claim that they can reopen an application at any time renders those provisions superfluous. It also converts the static application stage into an indefinite, ongoing process where an approval may be reopened, reconsidered, and rescinded at any time. Both outcomes contradict the governing statutory and regulatory scheme for 1332 waivers.

But even if the Departments had the authority to reopen, reconsider, and suspend an approved waiver before it is implemented, the Departments' reasons for doing so here wither under the slightest scrutiny. The Departments claim that Part II of Georgia Access no longer complies with the statutory coverage guardrail because of "[1] changes in relative levels of advertising and [2] attrition due to the change in enrollment pathways (absence of HealthCare.gov)." *See* Suspension Letter pg. 8. The entire basis for that conclusion, however, comes from a brief analysis done by the Departments' handpicked consultant, Acumen LLC. That analysis did not include an actuarial certification. And the Departments never explain why they apparently agree with Acumen's analysis even though that analysis contradicts the Departments' own findings and conclusions when they approved the waiver. That is likely because the Departments know Acumen's analysis is deeply flawed on multiple levels.

To start with, the entire Acumen report is based on assumptions layered on assumptions and estimates layered on estimates. For example, the new baseline analysis that Acumen conducts to ground its analysis is little more than guesswork. *See* Acumen LLC, Estimating the Coverage Impact of Georgia's Section 1332 Waiver with the Georgia Access Model pgs. 3-5 (April 2022) ("Acumen Analysis"). It employs three separate "estimate" steps to get a new baseline enrollment, with the steps themselves relying on dozens of assumptions. Those assumptions and estimates unsurprisingly resulted in the Departments' preferred outcome: a "significantly higher" baseline enrollment from which to judge Part II of Georgia Access.

Acumen's analysis of transition attrition is particularly puzzling. Acumen claims that "[t]he removal of the HealthCare.gov platform as the enrollment channel in Georgia is ... likely to impact total non-group enrollment." *See* Acumen Analysis pg. 8. But it was *always* going to be the case that Georgia would transition away from HealthCare.gov under Part II of Georgia Access; that was a primary point for approving the waiver in the first place. And the transition from the federal exchange to the Georgia Access Model is no different than the six states (Kentucky, Maine,

Nevada, New Jersey, New Mexico, and Pennsylvania) that have recently transitioned from the federal exchange to a state-based exchange.

The Departments also expressly rejected this *precise* attrition concern after commenters raised it at the approval stage in 2020. *See* Approval Letter pg. 19 (addressing comments that “both the transition itself and the new shopping experience would result in less overall enrollment.”). The Departments explained that the transition would not cause coverage losses because Georgia would automatically re-enroll “current Georgia FFE enrollees during the transition year to the Georgia Access Model, and that this process would mirror the one currently provided through the FFE;” and the Departments noted that those consumers “will similarly be able to auto-re-enroll each year in the Georgia Access Model.” *Id.* That means the same number of eligible consumers will be enrolled in plans on Day One of Georgia Access Model as were previously enrolled on the federal exchange prior to data migration. In addition, CMS would be “providing notice to Georgia FFE enrollees about the transition to the Georgia Access Model and [would] also provide the state with any necessary technical assistance to effectuate a smooth transition from HealthCare.gov.” *Id.*

The Departments also previously rejected commenters’ claims of transition attrition because, among other reasons, Georgia was required to (and did) “develop a comprehensive outreach and communications plan detailing ... all of the steps the state will take to ensure a smooth transition.” *Id.* That communications plan includes directing consumers to the Georgia Access Model website that will serve as a comprehensive source to provide information to consumers and stakeholders about plan shopping and enrollment options, as well as provide a Georgia Access Contact Center number on notices to consumers for them to get support and learn how to enroll in Georgia Access. This is one of many prior, contrary findings that the Departments now completely ignore.

The April 29, 2022 letter and the Acumen Analysis likewise ignore other aspects of Georgia’s implementation plan that will minimize any transition attrition. For example, current consumers will receive a *Welcome to Georgia Access* notice in October informing them of the migration to Georgia Access Model, which will be tailored to provide information for consumers based on how they enrolled in coverage on the federal exchange. Consumers who enrolled through an EDE on the federal exchange will be informed that they can continue to use their same enrollment platform for Georgia Access. Consumers who enrolled using HealthCare.gov will receive information on how to shop for and compare all plans in the market using certified web-brokers. They will enjoy the same type of “one-stop-shopping” experience as the federal exchange. Consumers will also be notified on how to find a local agent to get support or how to enroll directly with a carrier to streamline the shopping and enrollment process if they already know they want to stay with their current carrier. These and other strategies outlined in the state’s implementation plan will minimize the risk of loss during transition.

Acumen’s advertising analysis is flawed as well. As with transition attrition, the advertising analysis ignores the Departments’ prior, contrary conclusions on the exact same subject. For example, the Departments previously concluded that private brokers “will have access to a significantly larger addressable (or obtainable) market than under the current hybrid FFE/private sector model,” which will give them a “greater incentive to invest in marketing and outreach in order to retain existing enrollees and attract new consumers to the individual market.” Approval

Letter pgs. 5-6; *see also id.* at 22-23 (concluding that Part II of Georgia Access “creates significant market incentives to invest in marketing and outreach in the state.”). Yet Acumen’s analysis somehow concludes that there is “insufficient evidence from the state’s waiver application to predict how private entities will respond to the Georgia Access Model.” Acumen Analysis pg. 7. As a result of that divergent conclusion, Acumen “assumes that private entities do not change their marketing and outreach in response to the Georgia Access Model.” *Id.* That assumption is critical to Acumen’s conclusions—but is largely unexplained and directly contradicts the Departments’ prior conclusions.

So too with the analysis’s treatment of state advertising. For example, the Departments previously concluded that Georgia’s “plan to conduct a statewide public awareness campaign” was a sufficient “safeguard [] aimed to ensure it will not result in a decrease in enrollment.” Approval Letter 10. But Acumen now criticizes Georgia’s marketing plans as insufficient to maintain enrollment. *See* Acumen Analysis pg. 8.

Acumen relies on several other misguided assumptions that are critical to its conclusions on advertising. For example, Acumen claims that it assumed state and federal marketing are equally as effective. Acumen Analysis pg. 8. But Acumen *actually* loaded the dice against Georgia on this point by relying on coefficient estimates from a study that claimed federal marketing is more effective than state marketing.<sup>3</sup> Acumen either tried to deceive readers into believing it was making pro-Georgia assumptions (when it wasn’t) or it blatantly misread the underlying study. Either scenario undermines the credibility of Acumen’s analysis. At any rate, that study is not in line with other studies that have found federal advertising has no impact (while also concluding, for example, that “state-sponsored advertising has the most robust evidence for being a positive driver of Marketplace enrollment.”).<sup>4</sup>

In their Georgia Access approval letter to the state, the Departments themselves believed that state and private advertising was superior. Much of federal outreach funding goes to the Navigator program, which the Departments previously explained “has simply had limited impact on reducing the overall uninsured rate in Georgia.” Approval Letter pg. 22; *see also id.* (“In fact, one of the key criticisms of HealthCare.gov and the implementation of the Navigator program is that it has squeezed local agents and brokers out of the market with government-funded competition.”). The Departments recognized that state and private marketing was superior because “Georgia agents and brokers are part of their respective local communities and have a much greater reach and understanding of local dynamics to better reach local consumers.” *Id.* at 24. Acumen’s analysis thus contradicts the Departments’ own prior conclusions. It also contradicts CMS’s own findings that EDE partners (which Part II of Georgia Access is using) “attract[s] a higher proportion of new

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<sup>3</sup> Naoki Aizawa and You Suk Kim, “Public and Private Provision of Information in Market-Based Public Programs: Evidence from Advertising in Health Insurance Marketplaces,” NBER Working Paper 27695, Table 4, Column 3 (April 2021), available at <https://www.nber.org/papers/w27695>.

<sup>4</sup> *See, e.g.,* Paul Shafer, et al., “Competing Public and Private Television Advertising Campaigns and Marketplace Enrollment for 2015 to 2018,” *Journal of Social Sciences*, Vol. 6, No. 2 (July 2020), available at <https://muse.jhu.edu/article/761091>.

consumers and increased the percentage of returning consumers who made active plan selections during then 2021 OEP as compared to the 2020 OEP” in relation to “non-DE enrollment channels (the HealthCare.gov website and call center).”<sup>5</sup>

Acumen also makes incorrect assumptions about future spending to manufacture its conclusions on advertising. Acumen first assumes that federal advertising spending remains constant to 2022 levels. But federal funding for marketing varies year-over-year. And instead of affording Georgia the same assumption, Acumen assumed that the state would stop advertising entirely after 2023—even though Georgia has always intended to spend the same amount (or more) as it will in 2023 to maintain and drive enrollment. Acumen likewise assumes that private advertising funding will remain constant, again contradicting the Departments’ explicit prior conclusion that private companies will be incentivized to *increase* marketing efforts without the federal exchange in the market.<sup>6</sup>

For all these reasons, the Departments’ reliance on the Acumen analysis is badly misplaced. That analysis cannot serve as a plausible basis for concluding that Part II of Georgia Access does not comply with the statutory coverage guardrail.

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Georgia’s 1332 Waiver is exactly the type of state innovation that Section 1332 waivers are intended to promote. As the Departments recognized by approving the waiver, both parts are designed to work together to increase affordability of, and access to, coverage for thousands of uninsured Georgians. The waiver accomplishes this goal in several ways, including by targeting reinsurance funds to high-cost areas of the state to provide greater premium relief to those areas; incentivizing private-sector partners to enroll uninsured Georgians; and enabling the development of a more tailored, consumer-centric shopping experience than can be offered through a single, national exchange website like HealthCare.gov.

Part I of the waiver has already been highly successful. Premiums in the state are down 12% state-wide; and the number of carriers in Georgia’s market has increased from four in 2019 to 11 in 2022. Part II will work in tandem with Part 1 to add to that success. When both parts of Georgia Access are fully implemented, Georgia Access will accomplish the goal of better meeting the needs of Georgia’s currently underserved populations.

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<sup>5</sup> CMS, Impact of Enhanced Direct Enrollment During the Open Enrollment Period for 2021 Coverage pg. 1 (Jan. 2021), available at <https://go.cms.gov/3ozt9nu>.

<sup>6</sup> The Departments also explained that the “state could still meet the statutory guardrail even if the actual enrollment impact was somewhat lower than the state estimates, since state waiver plans are not required to increase enrollment, but rather must provide coverage to a comparable number of people as would receive it absent the waiver in order to meet this statutory guardrail.” Approval Letter pg. 10. Even accepting Acumen’s analysis as reasonable, the Departments do not explain why that analysis’s projected decrease in enrollment falls outside the permissible amount.

Georgia has taken numerous steps and made substantial investments toward that goal after the Departments approved the waiver, as Georgia has outlined for the Departments several times already. In reliance on that approval, Georgia conducted extensive outreach to carriers to bring them into the market as a part of the waiver. Georgia also engaged with numerous direct enrollment vendors that expressed a commitment to participating in Part II of Georgia Access. In all, Georgia has collaborated with more than twenty private-sector organizations that have made their own investments to ramp up for Part II of Georgia Access.

Georgia has also spent approximately \$31 million on Part II of Georgia Access after approval as the state moves toward implementation in PY2023—and that figure that does not include thousands of hours of staff time. If the Departments try to suspend the program, that will unlawfully undermine Georgia's reliance interests and render those investments wasted. Georgia expects the Departments will adhere to their obligations under the STCs and work with the state on implementing this critical program.

Thank you for your attention to this important issue. Should you have any questions, please contact me at [grant.thomas@opb.georgia.gov](mailto:grant.thomas@opb.georgia.gov) or (404) 971-7575.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant Thomas", is written over a solid black horizontal line.

Grant Thomas  
Director, Governor's Office of Health Strategy and Coordination

## Exhibit B



*Administrator*  
Washington, DC 20201

August 9, 2022

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 July 27, 2022, 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 to the State of Georgia ("Georgia" or "the State") from the Centers for Medicare & Medicaid Services (CMS) within HHS on behalf of both Departments. The Departments have reviewed the State's letter and are suspending<sup>1</sup> implementation of the Georgia Access Model effective August 9, 2022.<sup>2</sup> CMS will continue to operate the FFE in Georgia, and Georgia consumers will retain access to HealthCare.gov for plan year (PY) 2023 to purchase qualified health plans in the individual market. Georgia may submit a corrective action plan to bring the Georgia Access Model into compliance with the statutory coverage guardrail for the Departments' consideration to resume implementation for PYs 2024–2026. The Departments reiterate that they are committed to working with Georgia to make changes to the Georgia Access Model to ensure enrollment does not decrease in the State under the waiver, which is why the Departments engaged with the State for the past 13 months and are continuing to afford the State an opportunity to bring the Georgia Access Model into compliance with the statutory coverage guardrail, rather than terminating the Georgia Access Model at this time.

On April 29, 2022 ("April 2022 letter"), the Departments notified Georgia that the Departments were suspending<sup>3</sup> implementation of the Georgia Access Model, Part II of Georgia's section 1332 waiver plan,<sup>4</sup> effective July 28, 2022, unless Georgia responded before that date by sending a corrective action plan that would bring the waiver, with the Georgia Access Model in place, into compliance with the statutory guardrails<sup>5</sup> or by submitting a written challenge to the

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<sup>1</sup> In accordance with the Departments' authority under specific terms and conditions (STC) 17, 31 C.F.R. § 33.120(d) and 45 C.F.R. § 155.1320(d).

<sup>2</sup> The suspension does not impact Part I of Georgia's section 1332 waiver, the Georgia Reinsurance Program.

<sup>3</sup> In accordance with the Departments' authority under STC 17, and under 31 C.F.R. § 33.120(d) and 45 C.F.R. § 155.1320(d).

<sup>4</sup> The waiver was initially approved on November 1, 2020 and the approval letter can be found here: [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).

<sup>5</sup> See sections 1332(b)(1)(A)-(D) of the Affordable Care Act.

Departments' determinations.<sup>6,7</sup> In the April 2022 letter, the Departments outlined the information Georgia needed to provide within 90 days as part of any corrective action plan to demonstrate how the State would improve the Georgia Access Model to meet the statutory coverage guardrail and ensure the waiver would not result in coverage losses in the State. Further, the Departments explained that they expected that any corrective action plan from the State would include a revised outreach and communications plan, including planned funding, a spend plan, and additional information on engagement with underserved communities, to ensure additional outreach actions under the Georgia Access Model are sufficient to replace projected federal outreach spending and to avert projected coverage losses due to the transition to the Georgia Access Model, net of any coverage increases attributable to reinsurance. In addition, the Departments noted that the State should, as part of its efforts to avert projected coverage losses, comply with and pass readiness reviews, as specified in the specific terms and conditions (STCs) governing Georgia's section 1332 waiver.

On July 27, 2022, Georgia submitted a written challenge to the Departments' determinations. The State's letter challenges the Departments' basis for suspending the Georgia Access Model and contends that the Georgia Access Model does comply with the statutory coverage guardrail. The State did not submit a corrective action plan or provide other information to demonstrate it would ensure additional outreach under the Georgia Access Model is sufficient to avert the projected coverage losses, net of any coverage increases attributable to reinsurance. In addition, there continues to be a lack of adequate information about engagement with underserved populations and community organizations, as well as deficiencies with Georgia's implementation efforts and demonstration of the Model's readiness to go live for PY 2023.

### ***The Departments' Decision to Suspend the Georgia Access Model***

The Departments have reviewed the State's written challenge. While Georgia had 90 days from receipt of the Departments' April 2022 letter to address the concerns raised, the State did not submit a corrective action plan to demonstrate how the State would improve the Georgia Access Model to meet the statutory coverage guardrail and ensure the waiver would not result in substantial projected coverage losses in the State, nor did its written challenge provide analysis demonstrating that the waiver would comply with the coverage guardrail absent corrective action. Further, after review of the State's written challenge, the Departments are upholding their determinations that: (1) the State materially failed to comply with the STCs by repeatedly refusing to provide the Departments with the information requested as part of the Departments' monitoring and oversight authority;<sup>8</sup> and (2) the State has not demonstrated that the Georgia waiver, with the Georgia Access Model in place and absent corrective action, meets the statutory coverage guardrail in light of changes in federal law, policy, and other circumstances that materially affect the without-waiver baseline scenario. In addition to these findings, the Departments have also determined, based on readiness reviews conducted to date, that Georgia has not satisfied certain operational readiness requirements for a novel state program such as the Georgia Access Model. Nor has the State provided an adequate outreach and communications

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<sup>6</sup> The suspension does not impact Part I of Georgia's section 1332 waiver, the Georgia Reinsurance Program.

<sup>7</sup> A copy of the Departments' April 29, 2022, letter is available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-GA-Suspension-Letter-GA-Access-Model.pdf>.

<sup>8</sup> In accordance with the Departments' authority under STC 15, 31 C.F.R. § 33.120(f), and 45 C.F.R. § 155.1320(f).



plan. These operational and planning deficiencies are an additional basis for suspending implementation of the Georgia Access Model under the applicable STCs. For all of these reasons, suspension of the implementation of the Georgia Access Model will go into effect August 9, 2022.

**I. Georgia materially breached the STCs by failing to submit updated analysis requested by the Departments.**

As stated in the Departments' April 2022 letter, Georgia's failure to submit the requested updated analysis after multiple requests by the Departments constitutes a material failure to comply with Georgia section 1332 waiver STC 15. That STC provides for the Departments to "evaluate the waiver using federal data, state reporting, and the application itself to ensure that the Departments can exercise appropriate oversight of the approved waiver." That STC also requires the State to "fully cooperate with the Departments . . . to undertake an independent evaluation of any component of the waiver." And specifically, it requires the State to "submit all requested data and information to the Departments" as part of such an evaluation. That STC further permits the Departments to determine whether the Georgia Access Model "generally meet[s] the statutory requirements in each year that the waiver is in effect," and to consider "the longer-term impacts of the waiver and whether the statutory requirements will be met . . . over the course of the waiver term." STC 17 further authorizes, in relevant part, the Departments to suspend the Georgia Access Model if they "determine that the State has materially failed to comply with these STCs."

CMS requested Georgia to submit updated analysis of the Georgia Access Model in light of significantly changed circumstances since the Departments initially approved Georgia's section 1332 waiver. Those changes in federal law and policies include the American Rescue Plan Act of 2021 (ARP), as well as Executive Order 13985<sup>9</sup> and Executive Order 14009.<sup>10</sup> The Departments requested an updated analysis on three separate occasions: June 3, 2021;<sup>11</sup> July 30, 2021;<sup>12</sup> and November 9, 2021.<sup>13</sup> After each request, Georgia submitted responses stating the State's refusal to comply. Georgia's failure to comply with the Departments' lawful requests for updated analysis constitutes a material breach of the STCs because it deprived the Departments of the State's data and analysis demonstrating that the Georgia Access Model would satisfy the statutory guardrail requirements in light of those significantly changed circumstances. By depriving the Departments of that data and analysis, some of which may be available firsthand only to the State, Georgia significantly impeded the Departments' ability to monitor and oversee the Georgia Access Model's continued compliance with the statutory guardrail requirements. Accordingly, the Departments appropriately determined in their April 2022 letter that the State materially failed to comply with the STCs and properly suspended the Georgia Access Model in accordance with the STCs.

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<sup>9</sup> See <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.

<sup>10</sup> See <https://www.govinfo.gov/content/pkg/FR-2021-02-02/pdf/2021-02252.pdf>.

<sup>11</sup> See <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-Request-Updated-GA-Analysis-Letter.pdf>.

<sup>12</sup> See <https://www.cms.gov/files/document/response-1332-ga-depts-follow-letter.pdf>.

<sup>13</sup> See <https://www.cms.gov/files/document/depts-letter-comment20period.pdf>.

None of Georgia's arguments challenging the Departments' decision to suspend based on the State's material breach of the STCs are compelling. Georgia argues that the Departments did not permit adequate time for the State to submit the requested analysis. Two of the Departments' letters requested that Georgia submit its updated analysis within 30 days, and the third letter invited Georgia to submit the requested analysis before the close of a 60-day comment period. Georgia did not at any point request an extension for more time to submit the requested analysis. Instead, each of Georgia's responses flatly refused to comply with the Departments' requests based on the erroneous argument that the Departments lack authority to request data or analysis from the State. As demonstrated above and in the Departments' previous letters, the plain language of the STCs authorizes the Departments to request data, updated analysis, and even modifications to an approved waiver under section 1332 of the ACA as part of their oversight and monitoring responsibilities, as well as in light of changes to federal law.<sup>14</sup>

Georgia also argues that STC 15 does not permit the Departments to request updated analysis prior to implementation of the Georgia Access Model. But such a limitation on the Departments' authority to conduct oversight and monitoring of an approved section 1332 waiver appears nowhere in the text of STC 15 or anywhere else in the statute, regulations, or STCs. Moreover, as Georgia's written challenge itself acknowledges, implementation of the Georgia Access Model is well underway. Georgia has submitted a public awareness campaign and outreach approach plan and participated in readiness reviews regularly during the past year, and the State's aforementioned plan includes outreach to consumers prior to the go live date for the Georgia Access Model. It cannot be the case, then, that the Departments' oversight and monitoring obligations only begin once the Georgia Access Model has been fully implemented for PY 2023. Indeed, STC 15 itself indicates that the State must "meet the statutory requirements in each year that the waiver is in effect" and contemplates that the Departments' evaluation of Georgia's compliance with those requirements must also consider predictions as to "the longer-term impacts of the waiver and whether the statutory requirements *will be met* or exceeded over the course of the waiver term." (emphasis added). Moreover, the State is required to fully cooperate with an evaluation of "any component of the waiver." In other words, the State must comply with the statutory guardrails in each year the waiver is in effect (including the first year of the waiver), and the Departments must determine prospectively whether the State's waiver will comply with those guardrails (including in the first year of the waiver). Moreover, STC 15 applies to the waiver as a whole, including Part I of the State's waiver to implement a reinsurance program, which is already in effect. Thus, the Departments' request, prior to the Georgia Access Model going into effect, for updated analysis concerning the subsequent years of the waiver in which the Georgia Access Model will be in effect, was entirely consistent with their authority and responsibility under STC 15.

Georgia also argues that STC 7 does not permit the Departments to request updated analysis. As stated above, the Departments' request for updated analysis is authorized under STC 15. In any event, STC 7 permits the Departments to amend, suspend, or terminate Georgia's waiver based on changes in federal law. After the State failed to provide the requested analysis, the

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<sup>14</sup> See STCs 7, 14, 15, and 17; see also 31 C.F.R. § 33.120(a)(1) and (f), and 45 C.F.R. § 155.1320(a)(1) and (f).

Departments worked with Acumen, LLC<sup>15</sup> to analyze<sup>16</sup> the projected effects of the identified changes in circumstances and to assist the Departments' evaluation of the ongoing compliance of the waiver, with the Georgia Access Model in place, with the statutory guardrails.<sup>17</sup> As the Acumen analysis demonstrates, the ARP constitutes a change in federal law that significantly changes the without-waiver baseline against which the Departments must compare the Georgia Access Model to determine whether it complies with the statutory guardrail requirements. Accordingly, STC 7 clearly permits the Departments to suspend the Georgia Access Model for a failure to account for how the Georgia Access Model continues to comply with the statutory coverage guardrail following that change in federal law alone. To date, Georgia has failed to demonstrate that the Georgia Access Model is in compliance with the statutory coverage guardrail given the change in federal law with the ARP. Georgia also attempts to recast the Departments' decision as an "attempt to reopen and reconsider the initial approval." That argument ignores the Departments' repeated explanations that it was requesting updated analysis based on *significantly*<sup>18</sup> changed circumstances that arose after the Departments' initial approval, and that analysis was intended to determine whether the Georgia Access Model will continue to comply with the statutory guardrail requirements in light of those changes. Further, the ARP's effects on enrollment are not "speculative" as Georgia claims in its letter. During the 2022 Open Enrollment Period (OEP), over 700,000 Georgians signed up for coverage through the Marketplace, relative to fewer than 500,000 OEP signups for 2020, when Georgia submitted its application.<sup>19</sup> Georgia's letter also incorrectly claims that the Congressional Budget Office (CBO) estimates that the ARP's provisions will have no impact on enrollment levels by 2023.<sup>20</sup>

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<sup>15</sup> Acumen, LLC conducts policy research in support of federal, state, and local health care and social policy programs.

<sup>16</sup> Under 31 C.F.R. § 33.120(f) and 45 C.F.R. § 155.1320(f).

<sup>17</sup> Georgia's reference to CMS's "handpicked consultant" suggests that Georgia may believe that CMS failed to consult in selecting an independent evaluator, as required under STC 15. CMS, however, gave Georgia the opportunity to submit its own analysis and, when the state declined, the agency stated that it would proceed with its own evaluation of the Georgia Access Model. Georgia's decision not to collaborate by providing updated data and analysis does not render CMS's evaluation invalid. The STCs do not require CMS to seek Georgia's input before selecting a contractor to assist with the Departments' evaluation, but even if they did, any attempt to consult with Georgia to select a contractor to conduct the analysis would have been thwarted by Georgia's failure to cooperate with the Departments' evaluation throughout the process.

<sup>18</sup> The Departments reiterate that the aforementioned changes in federal law and policy were significant in terms of impact on enrollment, and impacted the baseline with and without waiver scenarios. Not every change in federal law will result in significantly changed circumstances or require a further evaluation of whether a waiver, or any component thereof, continues to meet the guardrails.

<sup>19</sup> As of January 15, 2022, 701,135 individuals in Georgia signed up for coverage through the Marketplace. *See* <https://www.cms.gov/newsroom/fact-sheets/marketplace-2022-open-enrollment-period-report-final-national-snapshot>.

<sup>20</sup> Georgia argues that, because the expanded premium tax credits (PTC) established under the ARP are set to expire before the Georgia Access Model goes into effect, the ARP will not affect coverage levels under that model. For the reasons stated in the Acumen report and our April 2022 letter that is not true. We also note that the Inflation Reduction Act of 2022, which would extend the expanded PTC for three years, recently passed the Senate and is currently being considered in the House of Representatives. Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. § 12001. While the Acumen analysis did not consider the Inflation Reduction Act and the Departments did not consider that legislation in reaching its decision to suspend implementation of the Georgia Access Model, if that legislation is enacted, Georgia's argument will be irrelevant. Moreover, if enacted, that legislation would constitute another change in federal law affecting coverage in Georgia, which Georgia would need to address before the Departments could lift the suspension for PY 2024 or later.

CBO's analysis projects that enrollment gains made in light of the ARP will persist beyond 2022.<sup>21</sup>

## **II. The Georgia Access Model no longer meets the statutory coverage guardrail requirement.**

The Departments are also upholding their suspension of the Georgia Access Model on the independent basis that the Model no longer satisfies the statutory coverage guardrail. As stated in the Departments' April 2022 letter, the Departments have made this determination based on the Acumen analysis which projects that, as a result of the Georgia Access Model, total non-group (individual market) enrollment is expected to be lower in all waiver years, ranging between 4.4 percent to 8.3 percent lower in PY 2023 and 8.4 percent lower each year in PYs 2024 through 2027, relative to a scenario with no Georgia Access Model and with reinsurance in place (what Acumen refers to as its baseline). The Georgia Access Model is projected to result in non-group enrollment losses of at least 23,930 individuals in PY 2023, net of any enrollment gains attributable to the reinsurance program. After consideration of the Acumen analysis, comments submitted during the recent federal comment period, and the State's written challenge, the Departments have determined that the Georgia Access Model no longer satisfies the statutory coverage guardrail.

Georgia argues that the Acumen analysis relied on too many assumptions and that those assumptions are flawed. The Departments disagree. The Acumen analysis is based on reasonable assumptions, using the best available data (including actual enrollment and other data; indeed, the data Acumen used is more recent than data utilized in Georgia's initial analysis),<sup>22</sup> and a thorough review of the literature regarding empirical evidence on factors impacting enrollment take-up in the ACA marketplace. For example, the Acumen report considered the thousands of additional consumers in Georgia that obtained coverage for the first time in the 2022 plan year, largely as a result of the ARP and increased federal spending on advertising, far beyond the projected 2022 enrollment the Departments considered during their review of Georgia's section 1332 waiver application. Acumen also considered the actual federal spending on advertising in PY 2022, which reflects a *substantial* increase over the projected federal spending that was used to determine the without-waiver baseline coverage levels when the Departments were reviewing Georgia's application. Such an analysis uses accepted analytical methods to project future individual market enrollment. Moreover, Acumen made a reasonable number of assumptions that were necessary to build the analytical foundation for its predictions.

To the extent more updated information and data (e.g., the expected amounts of private sector spending on advertising) would have enabled Acumen to rely on fewer or different assumptions, the Departments have repeatedly requested such data and an updated analysis from Georgia and

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<sup>21</sup> CBO noted that although the [ARP] provision will expire in 2023, CBO expects some of its effects from 2022 to persist into 2023. CBO notes that ARP's effects will dissipate by 2024. See <https://www.cbo.gov/system/files/2022-06/57962-health-insurance-subsidies.pdf>.

<sup>22</sup> Table 2 of the Acumen report lists the data sources and years of data used in the baseline scenario. The analysis also used data provided by the state for the Second Lowest Cost Silver Plan (SLCSP) with- and without- the state reinsurance program. Also see pg. 8-9 of the report.

the State refused to provide that information. For example, Georgia failed to provide the Departments with estimates about the level of anticipated private sector spending from agents, brokers, issuers, and Georgia Access Enrollment Platform (GAEP) partners on the Georgia Access Model. Had Georgia provided the requested data and analysis, perhaps the Departments' and Acumen's analysis could rely on fewer assumptions, or Georgia could have based its own analysis on different assumptions, provided they were reasonable. But Georgia's complete failure to engage on this question means that not only is the Departments' determination supported by the best available data they have before them, it is supported by the *only* relevant data before them to make the relevant determination about the impact of the changes in circumstances and the Model's compliance with the statutory coverage guardrail.

Moreover, each of the assumptions underlying the Acumen analysis are reasonable as explained below. In Georgia's July 2022 letter, Georgia disagreed with the assumption of transition attrition and argued that, given auto-reenrollment, "the same number of eligible consumers will be enrolled in plans on Day One of Georgia Access Model as were previously enrolled on the federal exchange prior to data migration" and that "Georgia was required to (and did) develop a comprehensive outreach and communications plan detailing . . . all of the steps the State would take to ensure a smooth transition."<sup>23</sup> The State's application itself assumed an overall 2 percent attrition rate with the transition away from HealthCare.gov.<sup>24</sup> One of the attrition scenarios in the Acumen analysis used *the same 2 percent attrition rate assumption* that Georgia used in its application, so there can be no argument that this assumption is unreasonable. Nevertheless, even accepting the State's own attrition rate, the Acumen analysis projects that at least 23,000 Georgians will lose coverage under the Georgia Access Model in PY 2023. And that 2 percent attrition rate assumption was based on the State's assurances that it would develop an outreach and communications plan that would mitigate transition attrition. Despite Georgia's claim that, following the Departments' approval of its section 1332 waiver, the State has developed a comprehensive outreach and communications plan that would mitigate any coverage losses, the information submitted by the State has not explained *how* the State will mitigate and overcome those coverage losses attributable to the transition from HealthCare.gov.<sup>25</sup> To be clear, a comprehensive outreach and communications plan supported with adequate funding could avert coverage losses, as the Departments explained in their April 2022 letter. But Georgia has not provided the Departments with sufficient information to support a continuing assumption that the State's outreach and communications plan will reduce transition attrition at this stage. Moreover, the Acumen analysis's projections of attrition are reasonable given that it was updated based on increased PY 2022 enrollment resulting from changed circumstances (the increased ACA subsidies provided under the ARP). As such, the 2 percent attrition rate applied to a greater number of enrollees will result in a larger total number of individuals losing coverage as a result of the transition off HealthCare.gov. Additionally, the Acumen analysis considered

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<sup>23</sup> Letter from Grant Thomas, Director, Governor's Office of Health Strategy & Coordination, State of Georgia to Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services at 6 (July 27, 2022).

<sup>24</sup> See PDF pg. 83 of Georgia Office of the Governor. 2020. "Georgia Section 1332 State Empowerment and Relief Waiver Application." <https://medicaid.georgia.gov/document/document/modified-1332-waiver/download>.

<sup>25</sup> See PDF pg. 13 of Acumen analysis: "The first scenario utilizes the attrition level from Georgia's actuarial analysis and assumes that 2% of non-group enrollees will leave the market and become uninsured relative to the baseline scenario." <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-GA-Waiver-Acumen-Analysis.pdf>.

alternative attrition rates based on the best available data, with the largest attrition rate assumption of 6 percent being based on the experiences of other states transitioning to state-based exchanges (SBEs).<sup>26</sup> In its July 2022 letter, Georgia states that “the transition from the federal exchange to the Georgia Access Model is no different than the six states (Kentucky, Maine, Nevada, New Jersey, New Mexico, and Pennsylvania) that have recently transitioned from the federal exchange to a state-based exchange (SBE).”<sup>27</sup> Given the abovementioned explanation, the Acumen analysis’s alternative attrition rate assumptions are reasonable.

The State also claims that Acumen’s analysis makes erroneous assumptions about advertising. First, the State disagrees with the assumption that private entities will not change their marketing and outreach in response to the Georgia Access Model. The State asserts that the Acumen analysis ignores the Departments’ previous conclusion that private brokers will have a “greater incentive to invest in marketing and outreach in order to retain existing enrollees and attract new consumers to the individual market.” Yet, with the implementation date approaching, Georgia has presented no evidence that this greater incentive has, in fact, translated, or will translate, into substantially increased outreach and marketing efforts on the part of private sector entities, as the State expected, particularly in light of the changed circumstances that have occurred since the initial waiver approval. The Departments’ assumption is based on changed circumstances: there are fewer potential new consumers in the uninsured population as a result of increased Marketplace enrollment, meaning there is less of an incentive for private sector entities to invest in marketing and outreach. As noted in the Departments’ April 2022 letter, during the 2022 OEP, Georgia saw a 36 percent increase in Marketplace enrollment compared to the 2021 OEP.<sup>28</sup>

Georgia’s written challenge likewise fails to recognize that the Departments’ assumptions at the time of approval were based on then-current federal outreach spending. Since approval, federal spending nationally on outreach has increased from \$10 million at the time of approval to \$100 million<sup>29</sup> in PY 2022 (similarly, Navigator funding was \$10 million and is now \$80 million).<sup>30</sup> Given that change in federal funding, the Departments’ assumption in its updated analysis that federal outreach spending in the without-waiver baseline scenario would exceed State and private brokers’ marketing and outreach spending under the Georgia Access Model is reasonable. Further, the advertising assumptions in the Acumen analysis are reasonable and supportable based on consideration of available literature on how public- vs. private-sponsored advertising levels change in response to market share. Recent research that has been published

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<sup>26</sup> For example, enrollment in Nevada decreased by 7% during the state’s transition to an SBE for the 2020 plan year, compared to flat enrollment nationally (compared to the 2019 plan year).

<sup>27</sup> Georgia also suggests that the Departments are treating Georgia differently from other states that have transitioned from HealthCare.gov. But no other states that have transitioned off HealthCare.gov have done so under a section 1332 waiver. Accordingly, other states that have transitioned off the FFE without a section 1332 waiver and therefore have not been subject to the statutory guardrail requirements applicable to section 1332 waivers.

<sup>28</sup> See <https://www.cms.gov/files/document/state-anniversary.pdf>.

<sup>29</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-availablemarketplace-health>. Also 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-availablemarketplace-health>.

<sup>30</sup> See <https://www.hhs.gov/about/news/2021/04/21/hhs-announces-the-largest-ever-funding-allocation-for-navigators.html>.

since initial approval of the waiver highlights that reductions in federal spending on advertising and outreach are not necessarily offset by increases in private spending on advertising.<sup>31,32</sup>

Additionally, the State disagrees with a research paper cited by Acumen and also argues that the Acumen report's assumption that state and federal marketing are equally as effective is unreasonable. As Acumen explains in its report, it relied upon Aizawa & Kim's 2021 study to assist the development of the advertising assumptions.<sup>33</sup> In summary, Aizawa & Kim's study examined the impact of per-capita TV advertising expenditures by the federal government, state governments, and private entities on ACA marketplace enrollment shares. The authors observed that private TV advertising content tends to promote the health insurer's brand, while federal TV advertising content is more focused on providing general information about enrolling in the marketplace. The authors also found that government advertising is significantly associated with increased overall enrollment (a market-expansion effect, or extensive-margin effect), whereas private sector advertising is associated with increased insurer-level enrollment but does not have a statistically significant impact on overall enrollment (an intensive-margin effect, and a modest "business-stealing" effect whereby private advertising influences a consumer's choice in the intensive margin and consumers are re-allocated across brands or plans). Acumen selected the Aizawa & Kim study as a key reference because it is one of the few empirical studies that seeks to estimate the impact of advertising expenditures by government and private entities specifically on ACA marketplace enrollment. Although there is other literature that examines the impact of advertising on health insurance enrollment, most studies do not focus on advertising measured by expenditure and are not specific to the ACA marketplace. For instance, the Shafer et al. (2020) study referenced in Georgia's July 2022 letter estimates the impact of an additional 100 TV advertisement airings on marketplace enrollment;<sup>34</sup> given limited information available on projected advertising related to total expenditures, using estimates of this type from the aforementioned study would have required even more assumptions. The levels of effectiveness are also not directly comparable to Aizawa & Kim's estimates because of the differences in advertising measures. In addition, the federal and state advertising levels used to generate the estimates in the Shafer et al. (2020) study include all health insurance advertising (e.g., Medicare

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<sup>31</sup> Myerson et al. (2022) find that funding cuts to the Navigator program between 2017 and 2019 were not associated with changes in the number of private sector TV advertisements aired targeting marketplace health insurance. The authors conclude that private sector entities did not increase their advertising to compensate for reductions in federal spending on Navigator activity. See Myerson R, Anderson D, Baum L, et al. Association of funding cuts to the Patient Protection and Affordable Care Act Navigator Program with Privately Sponsored Television Advertising. *JAMA Network Open*. 2022;5(8):e2224651.

<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2794812>. For the pre-publication version see: <https://drive.google.com/file/d/1uoQt0PepIBjNrxrtBS2OFGoGHpzYhajs/view>.

<sup>32</sup> Shafer et al. (2021) find that Marketplace insurers generally do not replace 1-for-1 the decline in federal-sponsored advertising. The authors concluded that insurers instead behave in ways that benefit themselves strategically, advertising more when becoming a monopolist but not filling the gap left by former competitors. See Shafer P, Anderson D, Baum L, et al. Changes in Marketplace Competition and Television Advertising by Insurers. *American Journal of Managed Care*. 2021;27(8):323-328. <https://www.ajmc.com/view/changes-in-marketplace-competition-and-television-advertising-by-insurers>.

<sup>33</sup> See Aizawa N and Kim YS. Public and Private Provision of Information in Market-Based Public Programs: Evidence from Advertising in Health Insurance Marketplaces. Cambridge: National Bureau of Economic Research (NBER). Revised April 2021. <https://www.nber.org/papers/w27695>.

<sup>34</sup> See Shafer P, Anderson D, Aquino S, et al. Competing public and private television advertising campaigns and Marketplace enrollment for 2015 to 2018. *RSF*. 2020;6(2):85-112. <https://www.rsfjournal.org/content/6/2/85>.

and Medicaid advertisements in addition to marketplace-specific advertisements), while Aizawa & Kim's analysis only includes advertisements that are specific to the ACA marketplace and is therefore more directly applicable.

Regarding the abovementioned assumption that state and federal marketing are equally as effective and Acumen's use of Aizawa & Kim's coefficient estimates (i.e., estimated percent change in enrollment for every 1 percent change in advertising spending), existing literature suggests that the type of advertising sponsor and content is associated with varied enrollment outcomes,<sup>35,36</sup> which Aizawa & Kim also acknowledge.<sup>37</sup> Yet as Aizawa & Kim explain in their paper, "the coefficient estimates for advertising by state governments are very small and almost close to zero. This small average effect could mask heterogeneous effects of advertising by different states. It is reasonable to expect that some states have more resources to design more effective marketing activities than others."<sup>38</sup> As Acumen explains in its report, "It is unlikely that Georgia's advertising expenditures in 2023 would have no effect on enrollment. Therefore, state government advertising is assumed to have the same impact on enrollment as federal government advertising dollars."<sup>39</sup> In other words, despite the mixed effectiveness of advertising among state governments, Acumen's analysis is giving Georgia the generous benefit of the doubt—that Georgia's State advertising dollars are assumed to be as effective as federal advertising dollars, on a dollar-per-dollar basis. However, because Georgia has thus far indicated it will spend only \$5 million on its outreach and communications (only \$1 million more than the \$4 million that Acumen's analysis factored in), this still falls well short of federal advertising spend that would occur in the baseline and is insufficient to avert the projected coverage losses.

Finally, the State also contends that Acumen incorrectly assumed that federal advertising spending for 2023 and beyond will be equivalent to 2022 levels. However, the Departments have already pointed out in multiple documents (i.e., April 2022 letter, November 2021 letter,<sup>40</sup> and November 2021<sup>41</sup> comment solicitation) that federal investments in outreach and the Navigator program, "are planned to continue and possibly increase in future years." The State's letter also contends that the Acumen analysis incorrectly assumed the State would not spend advertising dollars beyond 2023, explaining that "the State has always intended to spend the same amount (or more) as it will in 2023." However, the Departments note that this assertion has neither been communicated nor supported in the State's outreach and communications plan,

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<sup>35</sup> Karaca-Mandic et al. (2017) find that between 2013 and 2014 the volume of TV advertisements sponsored by state-based marketplaces was associated with reductions in uninsurance rates at the county-level. See Karaca-Mandic P, Wilcock A, Baum L, et al. The Volume of TV Advertisements During The ACA's First Enrollment Period Was Associated with Increased Insurance Coverage. *Health Affairs*. 2017;36(4):747-754. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.1440>.

<sup>36</sup> Gollust et al. (2018) find that during the 2013-2014 OEP, people living in counties with a higher volume of federal-sponsored advertisements were more likely to shop for and enroll in a Marketplace plan. See Gollust S, Wilcock A, Fowler E, et al. TV Advertising Volumes were Associated with Insurance Marketplace Shopping and Enrollment in 2014. *Health Affairs*. 2018;37(6). <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.1507>

<sup>37</sup> See Aizawa N and Kim YS (2021).

<sup>38</sup> See Aizawa N and Kim YS (2021).

<sup>39</sup> See PDF pg. 12 of Acumen analysis: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-GA-Waiver-Acumen-Analysis.pdf>.

<sup>40</sup> See <https://www.cms.gov/files/document/depts-letter-comment20period.pdf>.

<sup>41</sup> See <https://www.cms.gov/files/document/request-comment-georgia-access-model.pdf>.



a corrective action plan, the State's budget, or in other information provided to the Departments to date. If Georgia's assertion is true, that would reduce the amount of additional spending required to come into compliance with the coverage guardrail to resume implementation of the Model for PYs 2024–2026.

As outlined above, the State's criticisms of Acumen's analysis do not undermine the findings because those criticisms are inaccurate and do not account for significantly changed circumstances. Further, it is important to note that the waiver must meet the statutory guardrails in each year the waiver is in effect, and that assessments of whether the waiver meets the statutory guardrails must compare scenarios with and without the waiver. It would be improper to ignore changes in federal law or compare the waiver to federal outreach spending estimates that are no longer true. The Departments noted in their April 2022 letter that, "based on their review and consideration of Acumen's analysis and public comments, the Departments have determined that Georgia's waiver, with the Georgia Access Model in place, will provide coverage to fewer individuals than would have coverage absent implementation of the Georgia Access Model." The Departments generally agree with Acumen's findings. In making this finding and determination, the Departments are not seeking to "reopen and reconsider" their initial approval. Rather, the Departments are fulfilling their continuing oversight and monitoring obligations, and are determining whether the Georgia Access Model satisfies the statutory requirements for section 1332 waivers given significant changes in circumstances that have impacted the without-waiver baseline. The State also asserts without support that the Departments cannot base their determination on the economic analysis conducted by Acumen because it "did not include an actuarial certification." The Departments disagree. The Acumen analysis is sufficient because it is based on the best available data (including federal, State, and application data), reasonable assumptions, and is consistent with industry standards—no more is required under the statute, regulations, or STCs.<sup>42</sup> While it does not include an actuarial certification, the Acumen analysis is a sophisticated economic analysis that projects the potential impact of the Georgia Access Model on enrollment in the non-group market. Moreover, that analysis was conducted only after Georgia repeatedly refused to submit the requested updated analysis.

Some of the inputs and trends in the Acumen analysis, described above, may differ from those used by Georgia in its initial application. This is to be expected, as the Departments, as part of their ongoing monitoring and oversight of the Georgia Access Model, must appropriately assess when the circumstances underlying the analysis have changed. For example, the Acumen analysis estimates a higher enrollment baseline as a result of changes in federal law and policy that have led to a significant increase in individual market enrollment in Georgia.

In any event, the Departments gave Georgia multiple opportunities to submit its own updated analysis for the Departments to consider and review as part of this evaluation of the waiver's compliance with the guardrails, with the Georgia Access Model in place. In developing and submitting its own analysis, the State could have proposed and defended different assumptions,

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<sup>42</sup> Neither the statute, regulations, or STCs require a federal evaluation include an actuarial certification. Nor did the Departments' evaluations of three section 1332 state-based reinsurance waivers (Alaska, Minnesota, Oregon) published on October 5, 2021. See [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-).

as long as the Department determined they were reasonable. Instead, Georgia refused to provide the requested information or otherwise engage with the Departments' monitoring and oversight of Part II of the State's waiver, the Georgia Access Model. The State cannot now, after the fact, object to the reasonable data and analysis the Departments relied on, when the State had ample opportunity to participate in the analytical process but refused to do so.<sup>43</sup> In addition, the Departments' analysis also gave Georgia the generous assumption that the Georgia Access Model would be implemented successfully despite the remaining open items related to readiness, which are noted below. Consequently, the State has no reasonable basis to refute the Acumen analysis and the Departments' determination that the State's waiver, with the Georgia Access Model in place, does not meet the coverage guardrail and would result in coverage losses.

In addition, Georgia's July 27, 2022 letter notes that the State has taken numerous steps and made substantial investments toward implementation of the Georgia Access Model after the Departments approved the waiver, and that those constitute significant reliance interests that would be wasted if the Departments' suspension determination is permitted to stand. However, the Departments notified Georgia multiple times of their concerns about the continued compliance of the waiver, with the Georgia Access Model in place, with the statutory guardrails and requested an updated analysis on June 3, 2021;<sup>44</sup> July 30, 2021;<sup>45</sup> and November 9, 2021.<sup>46</sup> Additionally, from November 9, 2021 through January 9, 2022, the Departments requested 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 waiver, with the Georgia Access Model in place, continues to meet the guardrails in light of changed circumstances.<sup>47</sup> The State was thus expressly on notice that the Departments had concerns about the waiver's compliance with the guardrails, and could not have reasonably expected that the waiver would remain in effect absent its own submission of an acceptable corrective action plan. The State does not have a reasonable reliance interest in investments it made on the assumption that the Departments would not do what they proposed to do. The State chose not to submit any data in response to the Departments' requested analysis despite chances to do so, it chose not to submit comments during the federal comment period, and it chose not to submit a corrective action plan, all while choosing instead to continue implementation of the Georgia Access Model with vendors and organizations making investments over the last 13 months despite the Departments' letters.

Lastly, the Departments note that Georgia's investments into its administrative and eligibility systems will not be wasted if the Georgia Access Model goes live in PYs 2024–2026. For example, if Georgia submits a corrective action plan that the Departments determine that it sufficiently remediates the projected coverage losses and demonstrate readiness, the Departments will lift the suspension, and the financial and time investments that Georgia and others have made can support implementation of the Georgia Access Model in PY 2024 or beyond. Moreover, the harm to the public of allowing the implementation of the Georgia Access Model

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<sup>43</sup> Georgia also had an opportunity to submit comments during the November 9, 2021 to January 9, 2022 federal comment period to help inform the Departments' evaluation of the waiver's continued compliance with the statutory guardrails, but did not do so.

<sup>44</sup> See <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-Request-Updated-GA-Analysis-Letter.pdf>.

<sup>45</sup> See <https://www.cms.gov/files/document/response-1332-ga-depts-follow-letter.pdf>.

<sup>46</sup> See <https://www.cms.gov/files/document/depts-letter-comment20period.pdf>.

<sup>47</sup> See <https://www.cms.gov/files/document/1332-ga-access-public-comment-request.pdf>

to proceed, given the projected substantial coverage losses for tens of thousands of individuals, far outweighs Georgia's stated financial harms.

### **III. The other information Georgia has provided since the Departments' April 2022 letter fails to provide the information the Departments have requested**

The Departments have considered the State's July 27, 2022 letter; the State's other information submitted with regard to implementation of the Georgia Access Model, such as the Operational Report;<sup>48</sup> the State's public awareness campaign and outreach approach submitted as its "outreach and communications plan;"<sup>49</sup> the State's progress to date; and the State's expected progress across the entire spectrum of applicable Exchange requirements to address the concerns identified in the April 2022 letter. The Departments have determined that Georgia has not taken the necessary steps on its outreach and communications plan, the Georgia Access Model's impact on underserved populations, and the need to demonstrate readiness of the Georgia Access Model to address the Departments' concerns regarding the projected coverage losses that were raised in the Departments' April 2022 letter. In addition, as noted in Appendix A, there are deficiencies and a number of key outstanding items related to transition readiness activities for the Georgia Access Model, including: eligibility and enrollment for QHPs and advance payments of the premium tax credit (APTC) (as well as connections to Federal data sources to verify eligibility), certification of QHPs, and consumer assistance.

Outreach & Communications Plan – As described in the Departments' April 2022 letter, the State's outreach and communications plan submitted in the November 2021 Operational Report, and subsequent updates, did not include detailed information on engagement by the State with underserved communities or community partner organizations. Likewise, the State's recent outreach and communications plan submitted on July 15, 2022 does not include the requested specific examples and descriptions of tools and resources targeting specific populations and community stakeholders as part of the outreach plan required under STC 3. The State submitted outreach and communications plan, which is also a part of the readiness assessment and does not provide sufficient information to demonstrate how the State will improve the Georgia Access Model to avert the projected coverage losses and bring the waiver into compliance with the statutory coverage guardrail. As outlined in the Departments' April 2022 letter, in addition to the \$4 million Georgia previously committed to spend on advertising for PY 2023, at minimum, an additional \$8 million in outreach spending for PY 2023 would be necessary to bring the Georgia Access Model into compliance with the statutory coverage guardrail. The State's July 15, 2022 outreach and communications plan did not indicate or otherwise reflect a commitment of at least an additional \$8 million in State outreach spending for PY 2023 that the Departments identified as necessary to avert the projected coverage losses. Rather, the State's July update to the outreach and communications plan indicates a \$5 million spend plan, which still falls \$7 million short of the additional amount the Departments projected was necessary to bring the State's waiver, with the Georgia Access Model in place, into compliance with the coverage

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<sup>48</sup> STC 12 required, and the State submitted, a report to the Departments that details the project timeline for implementation of the Georgia Access Model and associated milestones, including but not limited to eligibility verifications and enrollment, at least 12 months prior to the first day of open enrollment for PY 2023. That report was last updated by the State on July 22, 2022.

<sup>49</sup> The State submitted a public awareness campaign and outreach approach plan on July 15, 2022.

guardrail. The State noted in its July 2022 letter that it has already spent \$31 million towards implementation of the Georgia Access Model for PY 2023, but the Departments note that this \$31 million is inclusive of all implementation activities and does not include the additional outreach funding necessary to avert coverage losses. The State's letter also contends that the State "has always intended to spend the same amount (or more) as it will in 2023," but this assertion is not supported in the State's outreach and communications plan, nor has this been reflected in an updated analysis or a corrective action plan, or in other information provided to the Departments to date, including the State's budget. As such, the State's outreach and communications plan and funding amount for the State's waiver, with the Georgia Access Model in place, remains insufficient to replace the projected federal outreach spending needed to avert the projected coverage losses.

Further, while the State's outreach and communications plan acknowledges the importance of community partners and includes some information about engagement with underserved communities and community partner organizations, the plan does not include the specific examples and descriptions of tools and resources targeting specific populations and community stakeholders requested by the Departments in their April 2022 letter as part of the outreach plan required under STC 3. The plan also does not provide sufficient detail about how frequently the State's outreach will address engagement with underserved communities, how the State's "Community Partner Program" will work, or the State's specific outreach actions beyond sharing marketing materials with these stakeholders. Additionally, although the State's outreach plan indicates that community organizations—including those currently serving as Navigators—may opt to be Georgia Access Community Partners, the State has not indicated that it will make funding or resources available to Community Partners; and these community partners cannot enroll consumers in coverage. Therefore, the State has not provided sufficient evidence or adequate assurances that consumers in underserved communities will have a smooth transition to the Georgia Access Model.

The State's outreach and communications plan also does not include any additional details on issuer or GAEP partner outreach plans.<sup>50</sup> While the State highlights in its July 27, 2022 letter that it has collaborated with over twenty private sector organizations that the State asserts have made their own investments in the Georgia Access Model, neither the letter nor the outreach and communications plan provide an estimated amount (or estimated range) of private entity spending on marketing and outreach or information on the tactics that will be used. The outreach and communications plan simply notes that "the State anticipates that GAEPs (both web-brokers and carriers) will conduct marketing and outreach to gain new consumers and that they will begin activities later in August." This general assertion is insufficient to address the Departments' concerns and demonstrate that outreach under the State's waiver, with the Georgia Access Model in place, will be adequate to replace the projected federal spending and avert the projected coverage losses.

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<sup>50</sup> The state's initial waiver noted "incentives for private entities to conduct marketing."

Readiness Reviews – The Departments have reviewed the information provided by the State related to and during readiness reviews and as part of the operational readiness process. As highlighted in the April 2022 letter, the Georgia STCs require that the State must successfully pass operational readiness reviews and open enrollment readiness reviews to demonstrate that the Georgia Access Model can handle certain complex eligibility scenarios for consumers’ applications through the Georgia Access Eligibility System (GAES) and with GAEP partners. The April 2022 letter also required the State to update the Operational Report required in STC 12 to reflect activities that will avert projected coverage losses.<sup>51</sup> The Departments reiterate that, because the Georgia Access Model relies on the successful implementation and integration of multiple, complex private and public systems, successful system integration is critical prior to implementation of a new state-based program such as this to ensure a smooth transition.<sup>52</sup>

The Departments are unable to confirm the State is ready for the Georgia Access Model to go live for PY 2023, as the State has not fully demonstrated certain aspects of readiness or compliance with applicable requirements for a novel state program such as the Georgia Access Model. The Departments have reached this decision based on the information submitted by the State, including its July 2022 letter; the State’s Operational Report; the State’s failure to submit a corrective action plan or otherwise submit information to address the concerns outlined in the Departments’ April 2022 letter; and the Departments’ assessment of the Georgia Access Model’s readiness. See Appendix A for information on key outstanding items related to transition readiness activities for the Georgia Access Model. Specifically, the readiness reviews have failed to demonstrate the GAES and GAEP partners’ readiness for several key items with respect to eligibility and enrollment, including changes necessary to ensure household information and changes in circumstances are collected and reported accurately for eligibility determinations, demonstration that applicants are accurately assessed/determined eligible for Medicaid/CHIP, certain scenarios for annual redetermination and re-enrollment which are critical for maintaining continuous and seamless enrollment, and other outstanding issues as detailed in Appendix A. Further, testing for GAEP partners, which are a main mechanism for enrollment, including API testing to make sure those partners can interface with Georgia Access, is also not yet complete. The Departments had also requested readiness reviews on earlier dates than the State agreed to, as well as the State rescheduled reviews, which has not allowed the Departments to fully assess readiness in time for the Model to go live for PY 2023. The Departments have provided countless hours of technical assistance to the State, consistent with STC 3,<sup>53</sup> all while the State refused to provide the information requested by the Departments in numerous letters.

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<sup>51</sup> See STC 12, “Operational Report: In addition, the state must submit a report to the Departments that details the project timeline for implementation of the Georgia Access Model and associated milestones, including but not limited to eligibility verifications and enrollment, at least 12 months prior to the first day of open enrollment for plan year 2023. The state must also comply with operational readiness reviews and open enrollment readiness reviews as required by the Departments.”

<sup>52</sup> The Departments had noted to the State that there was a risk that the State may not be able to resolve any deficiencies or shortcomings identified by the date by which a readiness decision would be assessed, and that these shortcomings could impact the decision on whether the Georgia Access Model would be able to proceed.

<sup>53</sup> STC 3 states that “CMS will also provide the state with technical assistance necessary to transition from HealthCare.gov to the new Georgia Access Model beginning with Plan year 2023...”

#### ***IV. Conclusion***

For the reasons outlined above, the Departments are suspending implementation of the Georgia Access Model, Part II of Georgia's section 1332 waiver. The suspension is effective August 9, 2022. CMS will continue to operate the FFE in Georgia and Georgia consumers will retain access to HealthCare.gov for PY 2023 to purchase qualified health plans in the individual market. Georgia should not take any further action to implement the Georgia Access Model as of the effective date of the suspension. This decision does not impact Part I of Georgia's section 1332 waiver, the Georgia Reinsurance Program.

Georgia may submit a corrective action plan to bring the Georgia Access Model into compliance with the statutory coverage guardrail for the Departments' consideration to resume implementation for PYs 2024–2026. Any corrective action plan must demonstrate how the State will improve the waiver, with the Georgia Access Model in place, as needed to meet the statutory coverage guardrail and ensure the waiver will not result in coverage losses in the State. It should also include responses to the questions and points outlined in the Departments' April 2022 letter and address the deficiencies identified in this letter. The Departments will consider any corrective action plan and, if the plan is sufficient, determine the time necessary for a reasonable transition period<sup>54</sup> and implementation.

Moreover, the Senate recently passed and the House is expected to consider legislation that would extend certain ARP provisions through 2025. If enacted, the legislation would not only moot Georgia's arguments that these ARP provisions are immaterial after 2022. It would also constitute another major change in federal law affecting Georgia's ability to meet the statutory coverage guardrail starting in 2023. Consistent with the STCs, if legislation is enacted, additional analysis would be needed regarding whether the Georgia Access Model meets the statutory guardrails given these subsequent changes in federal law. If legislation is enacted, Georgia would need to provide such analysis in addition to addressing the issues discussed above and below before the Departments could lift the suspension of the model. The Departments also note that the extension of the ARP provisions is expected to result in much higher coverage levels under the without-waiver baseline than assumed in the Acumen analysis discussed above, in which case implementation of the Georgia Access Model could put even more Georgians at risk of losing coverage.

The Departments reiterate their responsibility and commitment to conduct activities relating to monitoring and oversight to ensure continued compliance of approved waivers with applicable requirements as outlined in 31 C.F.R. § 33.120 and 45 C.F.R. § 155.1320. The Departments' oversight responsibilities are also included in each waiver's governing STCs.<sup>55</sup> We look forward to working with you as we continue to ensure the residents of Georgia have access to quality, affordable health care coverage.

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<sup>54</sup> See STC 17(e).

<sup>55</sup> See, e.g., STCs 7, 14, 15 and 17.

If you have any questions please contact 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,

A handwritten signature in blue ink that reads "Chiquita Brooks-LaSure". The signature is written in a cursive, flowing style.

Chiquita Brooks-LaSure

Cc: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury  
Gen. John F. King, Commissioner, Georgia Office of the Commissioner of Insurance and Safety Fire  
Ryan Loke, Special Projects, Office of Governor Brian Kemp  
Matthew Krull, Assistant Deputy Commissioner – Health Law & Policy, Georgia Department of Human Services

**Appendix A: Key Georgia Access Model Transition Readiness Outstanding Items as of 8/8/2022**

Key Functional Area	Outstanding Items
<b>Federal Data Services Hub (HUB) Authority to Connect (ATC)</b>	<ul style="list-style-type: none"> <li>The state has not submitted 3 artifacts which were due on 07/26/2022, and relate to approval of Georgia's Security Report (SSR).</li> </ul>
<b>Federal Data Services Hub (HUB) Testing</b>	<ul style="list-style-type: none"> <li>HUB harness/TDS testing began on 6/17, and CMS State Testing team is awaiting GA's request to schedule Hub testing.</li> <li>IRS End-to-End testing is delayed as they are dependent on SSR approval.</li> </ul>
<b>Plan Management</b>	<ul style="list-style-type: none"> <li>Georgia proposed a business agreement rather than a QHP agreement. CMS requested this agreement repeatedly to review and it was finally provided on 8/1. CMS has not had enough time to confirm if this is sufficient.</li> </ul>
<b>Eligibility and Enrollment</b>	<ul style="list-style-type: none"> <li>GA is working with CMS to transition Account Transfers (ATs) away from the FFE (including to turn off Inbound and Outbound Response ATs, and Outbound ATs, at specific, designated dates/times); this work will continue through OE and beyond.</li> <li>Georgia has not yet addressed the following open items identified through readiness reviews. (Note: This list represents high and medium-priority items, and is not inclusive of all open items):</li> </ul> <p><b>Prior to Open Enrollment –</b></p> <p><b>Annual Redetermination</b></p> <ul style="list-style-type: none"> <li>Execution of Annual Redetermination and Re-Enrollment (ARR) test scenarios 8 and 13 for active consumer enrollment.<sup>1</sup></li> <li>After GetInsured conducts the data migration process and validation in August, they will identify the subset of consumers that may be impacted by EDE partners currently offering dental through the FFE, but will not initially offer dental in GA Access for PY2023, and will provide this information to CMS.</li> <li>After data migration occurs, GA will notify CMS regarding any data validation issues and how the state plans to deal with these issues in such a way as to not cause problems for consumers accessing coverage.</li> <li>GA will review outstanding issues related to ARR processes (i.e., child as a non-applicant not included in ARR processing, and discrepancies in APTC amounts displayed) and follow up with CMS regarding proposed fixes and</li> </ul>

<sup>1</sup> These scenarios include an auto re-enrolled QHP-eligible consumer who locates and updates their application and selects the same 2023 plan, and a single consumer receiving advance payments of the premium tax credit (APTC) and has income data available but who does not want any coverage for the upcoming year through a GAEP.



timelines. Follow-up regarding logic for handling submitted-not-enrolled updates during OE (during demo, unclear if Submitted Not Enrolled (SNE) is being applied or not, Georgia agreed to follow up).

#### Application Eligibility/Eligibility Notices/Enrollment

- Household composition: GA should add clear instructions to ensure that the right people (both applicants and non-applicants) are included on the application/in the MAGI household, as this will ensure the application collects the correct income and household composition and lead to correct eligibility determinations
- Change in Circumstances (CiC): Regarding ORR item #3, demonstration of CiC Functionality, showing that a current QHP enrollee is able to be successfully transferred to Medicaid (CiC due to income), and that data is correctly input or ingested into Medicaid system.
- Medicaid/CHIP: Regarding ORR item #15, demonstration that applicants are accurately assessed/determined eligible for Medicaid/CHIP based on Medicaid gap-filling, and transferred accordingly to GA Gateway, with sufficient information for the SMA to attempt verification/enroll, as appropriate.
- Notices: Regarding ORR item #34, the State submitted their proposed Eligibility Determination Notices, including Account Transfer (AT) scenarios, for GA Access and GA Gateway. CMS is reviewing content.
- Verifications: Regarding ORR item #6, GA Access to provide CMS with periodic updates through the ORR process, on the list of eligibility verifications that will be performed during the initial application and during redetermination process, along with the Federal Data Services Hub services being used to perform each type of eligibility verification.
- APTC Agreements: Regarding ORR item #43, demonstrate that all APTC agreement statements are included at the end of Plan Comparison experience and displayed to consumers who elected to apply APTC toward their health plan premium.

#### **Post-Open Enrollment –**

As discussed during ORR demos, Georgia is tracking the following changes for implementation-

- Offline Use cases: GA to provide additional information on their handling of offline use cases over email to confirm prior to Open Enrollment. By after OE at the latest, before starting Periodic Data Matching (PDM) operations, GA must confirm that consumers who opt-out of allowing the Exchange to terminate their coverage if they are found to be dually enrolled in Exchange QHP coverage and Medicare or

Medicaid/CHIP that is considered MEC will only lose APTC eligibility as a result of Medicare PDM and Medicaid/CHIP PDM. GA must also confirm their consumer response period for Medicare PDM and Medicaid/CHIP PDM is 30 days.

- Preliminary Eligibility: GAEP applications should ask program questions of consumers based on consumer preliminary eligibility for respective programs. For example, in two GAEP demos held on 7/21 and 7/25, if a consumer is preliminarily eligible for a qualified health plan (QHP), they can attest to needing help paying their medical bills from the last three months. However, since they are not preliminarily eligible for Medicaid/Children’s Health Insurance Program (CHIP), the application should not ask them this question. (GA attested on 8/2 call that they plan to make these changes in 2023.)
- Notices/Content Consistency, Accuracy: Correcting inaccurate/inconsistent content on GAEP and Agent/Broker portal eligibility results page/related pages and/or in GA Access consumer notices (some examples include: specifying the program (Medicaid or CHIP) for which the consumer is/may be eligible, instead of in some cases defaulting to listing “Medicaid” for CHIP eligibility; consistent use of the same program language to indicate if a consumer is eligible for Medicaid or CHIP (e.g., “PeachCare for Kids” for the CHIP program, as appropriate, instead of sometimes listing “PeachCare for Kids” in one place, and “Medicaid/CHIP” in another, when a consumer is assessed eligible for CHIP). GA Access should work with the Medicaid/CHIP agency to ensure consistent terminology to minimize potential consumer confusion. (GA confirmed plans to implement by early 2023.)
- EDN: Within the “Eligibility for household members assessed eligible for Medicaid” section of the EDN, GA Access should add language, as applicable, to indicate consumers may need to provide more information to the state Medicaid/CHIP agency (SMA) when their citizenship was not verified by the GAEP/GA Access; including this language would help set consumers’ expectations for submitting future information.
- EDN: GA Access should not update/re-issue the EDN strictly as a result of receiving the Outbound Response AT from GA Gateway, as the Outbound Response AT itself does not represent a new eligibility determination by GA Access.
- ERP: GA should remove the language “Not Eligible to enroll in a Marketplace Health or Dental Plan” in the individual eligibility section when consumers are assessed eligible for CHIP. Since CHIP-eligible consumers can select to enroll in a full-cost health plan, the “not eligible” language could be misleading.

	<ul style="list-style-type: none"> <li>○ SEPs: Regarding ORR item #26-27, GA Access to demonstrate SEP effective dates, SEP windows, eligibility results messaging, and enrollment functionality (i.e. show what plans the consumer can see when subject to plan category limitations) for a PCL scenario, and for a scenario in which multiple SEPs with different effective date rules are applicable to the application.</li> <li>○ Agreements: On the “Sign and Submit” page, non-FA applications should not display the absent parent agreement or reference changes to income in the changes in information agreement. (GA tracking to implement this change by early 2023)</li> <li>○ ARR: Regarding ORR item #47, by early 2023, Georgia Access’s implementation of ARR opt-out capability should clearly convey to consumers, agents, and brokers that Georgia will not automatically renew the consumer’s coverage for next year if that option is selected, and they must apply and enroll again if they need coverage next year.</li> <li>○ Voter Registration: Regarding ORR item #42, demonstrate that the application includes a pathway to voter registration that is clearly labeled as optional.</li> </ul>
<p><b>Consumer Assistance</b></p>	<ul style="list-style-type: none"> <li>● Georgia has not addressed the open items shared in the 7/8 email related to the outreach and communications plan and Section III of the letter above</li> <li>● Agent/Broker plan: Georgia has indicated that agents and brokers will be responsible for consumer enrollment support but has not to date provided the Departments sufficient information on the process, for example: 1) the verification of training for agents and brokers to participate in the GA Access Model, or 2) oversight steps for agent and brokers like a certification agreement.</li> </ul>
<p><b>Other</b></p>	<ul style="list-style-type: none"> <li>● Consumer website: GA Access was supposed to demo GeorgiaAccess.gov site for CMS review and feedback, specifically regarding where consumers will go to view links to GAEPs and their respective phases, by the date of the last demo on 7/29/2022. Georgia did not provide this demo until 8/5/2022 which did not provide CMS time to review and provide feedback.</li> <li>● Issuer Connectivity: GA Access/GI to confirm completion status of EDI/connectivity 834 testing with all issuers which began on 5/31/2022 to ensure that the issuers working under the Georgia Access Model can process enrollment. State should continue to provide completion status of issuer testing until 11/1/2022.</li> <li>● GAEP Testing Plan: GA Access/GI has not demonstrated 100 percent completion of testing with GAEP partners as of the date of this letter. Georgia has noted that one GAEP will no longer be participating in the Georgia Access Model.</li> </ul>