



via electronic submission

December 3, 2019

Ryan Loke
c/o The Office of the Governor
206 Washington Street
Suite 115
State Capitol
Atlanta, GA 30334

Re: Georgia Draft 1332 Waiver Application

Dear Mr. Loke:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on Georgia's Draft Section 1332 waiver proposal. ACS CAN is making cancer a top priority for public officials and candidates at the federal, state and local levels. ACS CAN empowers advocates across the country to make their voices heard and influence evidence-based public policy change as well as legislative and regulatory solutions that will reduce the cancer burden. As the American Cancer Society's nonprofit, nonpartisan advocacy affiliate, ACS CAN is critical to the fight for a world without cancer.

ACS CAN supports a robust marketplace from which consumers can choose a health plan that best meets their needs. Access to health care coverage is paramount for persons with cancer and survivors. Research from the American Cancer Society has shown that uninsured Americans are less likely to get screened for cancer and thus are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.¹ In the United States, more than 1.7 million Americans will be diagnosed with cancer this year – an estimated 50,450 in Georgia.² An additional 15.5 million Americans are living with a history of cancer – 446,900 in Georgia.³ For these Americans access to affordable health insurance is a matter of life or death.

We offer the following comments on Georgia's proposed two-phase section 1332 waiver.:

¹ E Ward et al, "Association of Insurance with Cancer Care Utilization and Outcomes, *CA: A Cancer Journal for Clinicians* 58:1 (Jan./Feb. 2008), <http://www.cancer.org/cancer/news/report-links-health-insurance-status-with-cancer-care>.

² American Cancer Society. *Cancer Facts & Figures: 2019*. Atlanta: American Cancer Society, 2019.

³ American Cancer Society. *Cancer Treatment & Survivorship: Facts & Figures 2019-2021*. Atlanta: American Cancer Society, 2019.

Phase I: Reinsurance Program

ACS CAN supports Georgia's proposed reinsurance program. A well-designed reinsurance program can help to lower premiums and mitigate the plan risk associated with high-cost enrollees. We note that the draft waiver anticipates the reinsurance program will reduce premiums by 10 percent in plan year 2021.⁴ These savings could reduce federal government subsidy payments, and lower premiums for consumers who enroll in coverage through the exchange but are not eligible for subsidies.

Georgia's proposed reinsurance waiver is similar to that adopted in Colorado, which has been shown to reduce premiums. A reinsurance program may encourage insurance carriers to enter the market. A reinsurance program may also encourage plans already in the market to continue offering plans through the exchange. Further, the expected maintenance or increase in plan competition due to the reinsurance program may help to keep premiums from rising. These premium savings could help cancer patients and survivors afford health insurance coverage and may enable some individuals to enroll who previously could not afford coverage – the draft waiver anticipates increased enrollment of 0.4 percent.⁵

We are pleased that the proposal states that Phase I of the waiver will not impact the comprehensiveness of coverage in Georgia. ACS CAN believes that patient protections in current law – like the prohibition on pre-existing condition exclusions, prohibition on lifetime and annual limits, and Essential Health Benefits requirements – are crucial to making the healthcare system work for cancer patients and survivors. We strongly urge Georgia to proceed with its Phase I proposed 1332 waiver request for the creation of a reinsurance program.

Phase II: Georgia Access Model

In the second phase of its draft 1332 waiver, Georgia proposes to eliminate healthcare.gov as an enrollment platform for residents of Georgia and transition to an entirely new model, the Georgia Access Model, under which the private sector would provide front-end consumer shopping experiences and operations with the State validating whether an individual is eligible for subsidies and providing those subsidies to plans. Unfortunately, the proposed Georgia Access Model raises a number of concerns, as outlined in more detail below.

Program Design -- Access

Under the Georgia Access Model private sector entities will deliver front-end functions of outreach, customer service, plan shopping, selection and enrollment. Georgia would be responsible for ongoing program management and compliance of participating entities. The State believes this will help to promote competition and improve customer service.

Concern about potential for plan steering: We are concerned that under this proposal, consumers would be steered toward specific plan options and may not be provided with information regarding the totality of options available to them. Even if brokers don't outright

⁴ Office of the Governor. Georgia Section 1332 Waiver Application. November 4, 2019.

<https://gov.georgia.gov/press-releases/2019-11-04/georgia-access-public-comment>.

⁵ *Id.*

omit plan choices in their systems, there is still the potential for them to display certain plans differently – or provide more clear and detailed information about certain plans they have an incentive to sell – and in other ways alter the plan shopping experience so that the consumer is not truly presented with all the relevant choices. Web-brokers are typically paid on commission and that commission may vary depending on the plan in which the individual enrolls, thus creating a financial incentive for web-brokers to steer individuals to specific plan options rather than provide individuals with plan choices that best meet their needs.

Cancer patients have unique coverage needs: For patients with cancer and cancer survivors, it is crucial to choose a health insurance plan that provides coverage for their unique needs. Cancer patients and survivors must pay particular attention to whether a plan covers the medications they need, whether their (often multiple) physicians are in-network, whether their treatment center is in-network, and the cost-sharing that will be required of them. Weighing all these factors with premium prices, tax credits and subsidies can be daunting for even the most educated consumer, while we know that many individuals enrolling in the exchanges may have health literacy challenges or be inexperienced with health insurance and are almost guaranteed to have trouble. We are concerned that the proposal will inhibit an individual from finding a plan that best meets his/her needs.

Program Design – Plan Certification

We are pleased that under the Georgia Access Model the state will continue to make available to consumers metal level qualified health plans (QHPs) and catastrophic plans to look exactly the same as they do today. These plans allow individuals the choice of coverage options with key patient protections, including the prohibition against pre-existing condition exclusions and life-time and annual limits as well as the mandatory coverage of essential health benefits (EHBs).

Unfortunately, the state also intends to certify Eligible non-QHPs that “will offer a more limited set of EHBs in order to provide residents with expanded access to affordable health care coverage options.”⁶ The waiver notes these non-QHPs must maintain protections for those with pre-existing conditions and may not medically underwrite in order to be eligible for state subsidies. We have a number of concerns with this proposal.

EHBs are needed to protect people with pre-existing conditions: While we appreciate Georgia’s stated intention of maintaining protections for people with pre-existing conditions, allowing the availability of plans with limited EHBs actually harms people with pre-existing conditions by causing premiums to rise for plans that cover the full EHB – plans that patients with pre-existing conditions must enroll in to receive treatment (discussed further below). Furthermore, comprehensive coverage is especially important for consumers who are diagnosed with serious diseases like cancer during the middle of the plan year. Most cancer diagnoses are unexpected, and cancer patients likely did not know they would need cancer care when they initially enrolled in their plan. Consumers who enroll in health coverage expect their plan to provide coverage for these necessary products and services. If cancer patients do not have access to cancer treatment

⁶ Georgia Draft 1332 waiver at 18.

services through their health insurance coverage, they face astronomical costs and disruptions and delays to their treatments or may be forced to forgo treatment entirely because of costs. Providing coverage of EHBs, like preventive services (including cancer screenings), helps to prevent some forms of cancer and can help detect other cancers at an earlier stage when the individual has a higher likelihood of more treatment options and a better overall health outcome. Including preventive services as standard benefits in health insurance has benefits to overall public health, saves lives, and can reduce healthcare spending.

EHBs tied to life-time and annual limits: We also note that prohibitions of annual and life-time limits are a key protection for individuals with pre-existing conditions. These protections exist only for EHBs. Thus, if a service is no longer considered to be an EHB service, the plan can choose to no longer cover the service or it can impose life-time and annual limits on coverage. Cancer patients and survivors often have high treatment costs and require spending that reaches the amount of annual and/or lifetime cap on health services that was typical prior to 2010. According to one study, prior to the enactment of the current protections one in ten cancer patients responding to the survey reached the limit of what their insurance plan would pay for their cancer treatment.⁷

Potential for Non-QHPs to Discriminate: While the waiver suggests that Eligible non-QHPs would be prohibited from medically underwriting, Eligible non-QHPs could choose to exclude coverage of services that are necessary for individuals with pre-existing conditions (for example, robust coverage of prescription drugs). It is not clear whether these plans would be permitted to vary premiums based on non-health factors beyond what is currently permitted (e.g., age and tobacco usage) or impose other non-health status-related factors (such as gender and work history). Expanding the ability to impose more premium variations for non-health factors can be a backdoor way of discriminating against individuals with pre-existing conditions. For example, increasing the age rating beyond the current 3:1 ratio would make health insurance more expensive for older adults, which is important from a cancer perspective because the incidence of cancer increases with age. According to the American Cancer Society, 85 percent of all cancers in the United States are diagnosed in people 50 years of age and older.⁸ Thus, increased age rating bands would mean that older individuals (those more at risk of developing cancer) would face significantly higher health care premiums. Prior to the enactment of the current age rating band restrictions, older adults faced significant problems accessing health insurance coverage, in large part because of age rating bands.⁹

In addition, Eligible non-QHPs would not have to meet network adequacy requirements, which provides another way for these plans to discriminate against individuals with pre-existing conditions like cancer. Access to a full range of health care providers is critical for

⁷ USA Today, Kaiser Family Foundation, Harvard School of Public Health. National Survey of Households Affected by Cancer. Kaiser Family Foundation, November 2006. Available at <https://www.kff.org/health-costs/poll-finding/usa-todaykaiser-family-foundationharvard-school-of-public-2/>.

⁸ American Cancer Society. *Cancer Facts & Figures 2019*.

⁹ Smolka, G, Purvis, L, & Figueiredo, C. Health Care Reform: What's at Stake for 50- to 64-Year-Olds, AARP Public Policy Institute [Insight on the Issues #124], March 2009. Available at https://assets.aarp.org/rgcenter/health/i24_hcr.pdf.

cancer patients – those newly diagnosed or in active treatment as well as survivors. Each cancer diagnosis is as unique as is the team of providers and specialists needed to help a patient identify and receive the most appropriate and effective treatment. That is why it is so critical that issuers offer robust networks of providers, including specialists.

Eligible Non-QHP Premiums' Impact on QHP Premiums: One of the waiver's stated goals is to provide residents with access to Eligible non-QHPs in order to provide more affordable health care coverage options. We are concerned that not only will Eligible non-QHPs provide less comprehensive coverage, but they are more likely to attract younger and healthier individuals, who are more likely to be attracted to the lower premiums. Conversely, older and sicker individuals who need comprehensive coverage are more likely to enroll in the higher cost QHPs.

Variation will make it harder to shop for coverage: We also note that allowing non-QHPs to be marketed alongside QHP coverage options will make it harder for consumers to choose a plan that best meets their needs. This confusion will be compounded by the fact that education and outreach will be conducted by private entities, who, as discussed in detail above, have a financial interest to steer consumers to particular plan options (particularly those options from which the broker may receive a larger commission) and may not provide consumers with all available choices.

Program Design – State Subsidies

Beginning in plan year 2022 the state proposes to implement a state subsidy structure for both QHPs and Eligible Non-QHPs that is the same as the existing federal subsidy structure for individuals between 100 percent to 400 percent of the federal poverty level (FPL). The State will manage eligibility determinations for individual market subsidies. However, the waiver notes that it will institute a budget caps on subsidies, which could limit their availability:

If a larger number of subsidy eligible residents enroll than projected, the State will grant subsidies on a first in, first out basis until the funding cap is reached. Additional enrollees will still be able to enroll in plans and will be placed on a wait list, should additional State funding become available.¹⁰

ACS CAN has a number of concerns with this proposal.

Subsidies should not be block granted: ACS CAN strongly opposes the proposal to essentially block-grant federal subsidies to the state. Under current federal law, individuals are eligible for subsidies if they meet certain income and eligibility requirements. These subsidies are provided to ensure that individuals have access to affordable health insurance coverage.

We are gravely concerned that Georgia would consider placing individuals who otherwise qualify for federal subsidies on a wait list. Cancer patients need access to comprehensive, affordable health insurance coverage. Individuals may need to enter the individual market for a variety of reasons, for example, when an individual loses a job due to a cancer diagnosis and treatment. Research suggests that between 40 and 85 percent of cancer patients stop working

¹⁰ Georgia Draft 1332 waiver at 20.

while receiving cancer treatment, with absences from work ranging from 45 days to six months depending on the treatment.¹¹

Under the proposed waiver, an individual who loses employment during her cancer treatment could presumably qualify for a special enrollment period into the individual market but may not be able to afford her plan because she is unable to obtain subsidies if the funding cap is reached. For those cancer patients who are mid-treatment, a loss of health care coverage could seriously jeopardize their chance of survival. Similarly, a gap in coverage for a cancer survivor could jeopardize their health, as cancer survivors often require frequent follow-up visits and maintenance medications as part of their survivorship care plan to prevent recurrence.¹² Being denied access to one's cancer care team could be a matter of life or death for a cancer patient or survivor, and the financial toll that the lock-out would have on individuals and their families could be devastating. A patient's ability to survive cancer should not depend on the time of year they are seeking treatment, or whether too many other patients before them enrolled in coverage.

Subsidies should not be given to non-QHPs: As discussed in detail previously, we have significant concerns with the availability of non-QHPs. We are concerned that subsidizing Eligible non-QHPs will result in premiums for QHPs to increase. If the amount of the state subsidies is limited, then individuals would be more likely to enroll in an Eligible non-QHP, which as discussed above, could provide inadequate coverage for an individual in active cancer treatment or cancer survivor.

Conclusion

On behalf of the American Cancer Society Cancer Action Network, we thank you for the opportunity to comment on the proposed section 1332 waiver. We strongly support Georgia's proposed reinsurance waiver, which we believe will provide long-term viability of the individual market while not eroding important consumer protections. We have serious concerns with the proposed Georgia Access Model and would discourage Georgia from proceeding with the second phase of its 1332 waiver. If you have any questions, please feel free to contact me at 404.582.6122 or andy.freeman@cancer.org.

Sincerely,



Andy Freeman
Georgia Government Relations Director
American Cancer Society Cancer Action Network

¹¹ Ramsey SD, Blough DK, Kirchoff AC, et al. Washington State Cancer Patients Found to be at Greater Risk for Bankruptcy than People Without a Cancer Diagnosis," *Health Affairs*, 32, no. 6, (2013): 1143-1152.

¹² National Cancer Institute. *Coping with cancer: Survivorship, follow-up medical care*. Accessed October 2018. <https://www.cancer.gov/about-cancer/coping/survivorship/follow-up-care>.