

August 4, 2023

Dr. Ellen Montz
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight (CCIIO)
Centers for Medicare & Medicaid Services (CMS)
U.S. Department of Health and Human Services
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Dear Director Montz,

We are in receipt of your letter dated July 27, 2023, and are surprised by the agency's decision not to grant Georgia approval to implement a State-based Exchange (SBE) for Open Enrollment (OE) 2024 as Georgia requested. Instead, the agency granted only conditional approval to operate a State-based Exchange on the Federal Platform (SBE-FP) for 2024 and an SBE for 2025. Georgia is clearly ready to implement an SBE for OE 2024 and has continually demonstrated that readiness. Since Georgia first notified CMS of its intention to transition off the federal Exchange under its 1332 Waiver submitted December 23, 2019, we have been steadfast in our desire to bring the individual insurance marketplace into the State. We believed then, as we believe now, that Georgia is best positioned to serve the needs of its residents, just like the other 18 states that currently operate SBEs.

After CMS suspended approval of Georgia Access under the 1332 Waiver, which would have transitioned Georgia's health insurance plans from HealthCare.gov for OE 2023, the State pivoted and operated in good faith to build an SBE. The State has consistently demonstrated operational and technical readiness and is tracking closely with the readiness level of the Commonwealth of Virginia, also transitioning off the federal Exchange for OE 2024. From the submission of Georgia's SBE Blueprint Application on February 14, 2023, the State has actively collaborated with CCIIO to demonstrate readiness and respond to feedback and questions. We have been transparent about our progress, including the management of risks and delays that all states experience transitioning from the federal Exchange. Additionally, we provided all requested demonstrations of the State's systems and incorporated required feedback from CCIIO. We were also told CCIIO's go/no-go decision to grant conditional SBE approval for Georgia for OE 2024 was going to be August 4, 2023, in alignment with the timeline for all states moving off the federal Exchange this year. The letter provided on July 27, 2023, requiring a response from Georgia by August 4, 2023, is a last-minute change in direction from the agency.

As of the date of your letter, Georgia either met, or had a plan to meet, all mandatory operational and technical milestones historically required of other states that have transitioned off the federal Exchange. We have also responded to questions from CCIIO and met new and evolving requirements throughout the last three months of Operational Readiness Reviews (ORRs). We have continued to be responsive to feedback and suggestions, and modified our approach based on that feedback, as appropriate. It is unprecedented for CMS to repeatedly prevent a state from assuming responsibility for its Exchange operations.

Indicators of Readiness for SBE for OE 2024

All indications leading up to CCIIO's July 27 letter pointed towards Georgia being on track for meeting SBE requirements for OE 2024, including:

- July 5, 2023 – CCIIO shared the HealthCare.Gov transition letter for Exchange consumers for Georgia's final review and sign-off.
- July 10, 2023 – CCIIO reviewed the Final Progress Letter with the State.
- July 12, 2023 – CCIIO hosted the first biweekly Eligibility & Enrollment Data Migration meeting with Georgia and Virginia.
- July 14, 2023 – CCIIO shared ORR feedback on all demos the State had provided for the Single Streamlined Application on 5/25, 5/26, 6/9, 6/15, 6/16, 6/28, and 7/7 noting required and recommended changes. The State submitted the first iteration of the Final Progress Letter.
- July 17, 2023 – The State responded to CCIIO's ORR feedback and confirmed how changes would be implemented to address CCIIO's feedback on required changes.
- July 18, 2023 – The State received confirmation that the Authority to Connect (ATC) had been reviewed by the CMS Information Systems Security Officer, had no significant flags, and would soon be forwarded for final leadership sign-off.
- July 19, 2023 – CCIIO kicked off the Policy Based Payments meetings with Georgia issuers outlining the necessary steps and requirements for issuers during the transition.
- July 21, 2023 – CCIIO shared and updated version of the ORR feedback and consolidated list of feedback on notices; the State provided a demonstration of its Single Streamlined Application with an EDE partner; the State shared the second iteration of the Final Progress Letter and the Georgia Access Call Center Development Plan.
- July 27, 2023 – The State received approval of its Safeguard Security Report (SSR) through a formal letter from the IRS Office of Safeguards dated July 26, 2023.

The number and scope of demonstrations Georgia provided CCIIO to demonstrate readiness, the volume of questions received and answered, and the number of videos and screenshots provided,

far surpasses those previously required by a number of highly successful SBEs during their transition. With its technology and contact center vendor, Georgia Access has been able to not only leverage the same model which enabled those states' successes, but has also benefitted from the improvements they have built over multiple years. The letter does not mention the core SBE system and operational components of Georgia Access because there is no reason to believe Georgia is less ready to implement an SBE compared to other states that successfully transitioned to SBEs.

Furthermore, we disagree with the rationale cited in the letter regarding Georgia not being ready to implement an SBE for OE 2024. The letter outlined three concerns as follows:

1. The Date of Georgia's Blueprint Submission.

Georgia provided CMS with timely notice. Georgia first notified CMS on December 23, 2019, of its intent to leave the federal Exchange and sought approval to do so through a 1332 Waiver. When federal authority for Georgia Access was revoked in August 2022 under the previously approved waiver, the State pivoted and sought approval for an SBE. Georgia has been clear over the last three years that it would like to move off the federal Exchange, and CMS has blocked every effort.

At any rate, the draft Notice of Benefit and Payment Parameters (NBPP) released on December 12, 2022, proposed a change to 45 CFR 155.106(a)(3) and (c)(3) which removed the requirement to have an approved or conditionally approved Exchange Blueprint 14 months prior to an SBE transition. The final NBPP released on April 14, 2023, and effective on June 18, 2023, finalized the proposed change to allow the agency flexibility to approve Blueprints prior to the date on which the Exchange would begin open enrollment noting, "The submission and approval of Exchange Blueprints is an iterative process that generally takes place over the course of 15 months prior to a State's first open enrollment with an SBE, or three to six months prior to a State's first open enrollment with an SBE-FP.

After the State provided its Blueprint Application for an SBE for OE 2024, CCIIO did not communicate that the 15-month timeline was definitively an issue or indicate that it would reject the submitted Blueprint on that basis even if Georgia was able to demonstrate readiness. During the first meeting with the CCIIO State Marketplace and Insurance Programs Group (SMIPG) on February 23, 2023, leadership expressed agreement and excitement with Georgia's decision to transition to an SBE and coordinated with our team immediately to pick back up from the prior year's ORRs.

Late in the process, during our first meeting with you on April 19, 2023, you expressed concerns with Georgia's ability to meet SBE milestones and encouraged the State to consider moving to an SBE-FP for OE 2024. The State requested to see the list of key milestones and dates in which CCIIO was basing this recommendation on in order for Georgia to make a clear determination and assessment of our readiness and whether to stay the course or pivot to an SBE-FP for OE 2024. After receiving the list on April 26, 2023, Georgia responded on May 1, 2023, to each of the items and dates CCIIO provided. The State replied that all identified milestones were either on track or had clear a mitigation strategy for those that were slightly delayed. At that point, the

State was confident it could achieve all SBE readiness milestones for OE 2024 and continued to stay the course. CCIIO did not respond or indicate the information provided was insufficient. Further, Georgia and CCIIO continued forward with all ORR activities.

During a follow up meeting with you on May 22, 2023, you expressed concerns about the timelines of the Blueprint's submission and that the State hadn't first transitioned to an SBE-FP. But it was never communicated that those items would prevent the State from going live this fall if it demonstrated readiness with all operational and technical requirements. CCIIO's continued engagement on ORRs and demonstrations pursuant to a Georgia SBE implied that a late Blueprint was not a dealbreaker.

2. The Delays in the State Granting Legislative Authority and Impact on Staffing.

Georgia Senate Bill 65 was introduced in the Senate on February 1, 2023, to grant OCI authority to implement and operate an Exchange. Georgia shared in its Blueprint Application an initial target date of March 30, 2023, to have legislation passed and signed based on the legislative calendar. However, legislative processes and timelines are always subject to shift, a well-known and understood fact for CCIIO. The State continued to keep CCIIO apprised of the bill's progress and continued to move forward with implementation activities. CCIIO was notified when Governor Brian Kemp signed Senate Bill 65 into law on May 2, 2023.

CCIIO first requested to see the State's target staffing plan on April 26, 2023. The State shared its target staffing plan with CCIIO on May 5, 2023. As with any new organization, there have been adjustments to original staffing plans as Georgia Access became operational. At no time did staffing plan changes prevent Georgia from achieving any operational or technical milestones. Georgia Access has continued to be strongly supported by the OCI leadership team, existing OCI staff, including a communications and consumer outreach team that has been deeply involved in all Georgia Access public awareness and marketing efforts, and well-experienced contractors as the SBE has hired staff. The SBE also strategically recruited and hired an Executive Director and senior leaders with in-depth experience and knowledge of SBEs. This has allowed them to hit the ground running without losing momentum.

It is our understanding that Georgia's staffing and level of support at this point in its implementation is comparable to, if not ahead of, prior states that have gone live in the last four years. This is based on our ongoing conversations with these states. Furthermore, neither the Blueprint Application nor federal regulations dictate or even recommend hiring timelines or minimum staffing levels states must meet when standing up an SBE.

3. Website Readiness, Consumers Outreach and Education, and PHE Unwind.

From our initial decision to move off the federal Exchange to better meet consumer needs, public outreach and communication has been a primary focus for Georgia Access. Georgia has continued to significantly invest in consumer outreach and education. Georgia initially hired a marketing and advertising firm to develop its approach for OE 2023. Despite the suspension of the 1332 Waiver, the State still went ahead with a \$5 million marketing campaign for OE 2023, underscoring the State's commitment to increase enrollment and reduce the number of uninsured

in Georgia. The paid media campaign encouraged the uninsured population to enroll in affordable healthcare during OE 2023 and directed consumers to [GeorgiaAccess.gov](https://www.GeorgiaAccess.gov) to learn more. The marketing campaign resulted in 236 million digital impressions, 396 thousand site clicks, and 334 thousand site users. This effort helped to drive an increase in enrollment in Georgia by over 178 thousand consumers compared to the previous year. The Georgia Access website continued to be periodically updated with information for the SBE implementation.

As shown through demonstrations and screenshots, the additional website functionality that would have gone live for OE 2024 met all requirements under 45 CFR 155.105(b) and 45 CFR 155.205(b). Georgia has continued to keep CCIIO apprised of its outreach plans as well as be responsive to feedback on its website.

- April 20, 2023 – Georgia shared its communication plan in response to the request from CMS to ensure the consumer messaging was coordinated between HealthCare.gov and Georgia Access.
- May 15, 2023 – Georgia shared its marketing and outreach plans with CCIIO, inclusive of a \$9 million campaign for OE 2024 as part of its Public Health Emergency (PHE) Unwinding Report.
- June 16, 2023 – Georgia provided a demonstration of its consumer website for plan shopping functionality and also provided an initial demo and draft wireframe of its marketing website. The State shared that it would be soliciting user testing and feedback from consumers and stakeholders prior to launching on the website landing page.
- July 3, 2023 – CCIIO provided feedback on the draft website wireframe.
- July 12, 2023 – Georgia provided details on its Georgia Access website user testing approach and noted that the feedback from CCIIO had been incorporated for user testing.
- July 24, 2023 – Georgia presented the website changes made based on CCIIO feedback and user testing. We also shared with CCIIO plans for an upcoming second round of user testing for further refinement. The State also provided details on its marketing and outreach plans for OE 2024.

Georgia consumers are our top priority. Our goal has always been to ensure a smooth transition for current Exchange consumers, increase enrollment to reduce the uninsured, and improve the transition for consumers disenrolled from Medicaid to the Exchange. Georgia has incorporated best practices and recommendations from CMS and the six other states that have previously transitioned off the federal Exchange. These strategies are intended to help Georgians already receiving health insurance through the federal Exchange to successfully transition to the SBE. Georgia's approach for effectively transitioning current Exchange consumers includes:

- Implementing an SBE eligibility and enrollment system that is currently used in production in five other states – Idaho, Minnesota, New Jersey, Nevada, and

Pennsylvania – and is currently being implemented by Virginia as they also seek to transition to an SBE this fall.

- Sending advance notice of the transition to current Exchange consumers to notify them of the upcoming change.
- Sending a welcome notice from Georgia Access to current Exchange consumers ahead of OE informing them how to shop for and enroll in coverage on Georgia Access.
- Running auto re-enrollment for current Exchange consumers ahead of OE into their same 2023 plans for 2024 so that even if consumers do not actively update their application and select a plan during OE 2024, they will not lose health insurance coverage during the transition.
- Following the approach for the federal Exchange, the State planned to maintain the OE from November 1, 2023, until January 15, 2024, to allow consumers more time to shop for and enroll on Georgia Access.
- Allowing the same Special Enrollment Periods (SEPs) as the federal Exchange, including an SEP for consumers under 150% of the FPL to shop for and enroll in coverage at any point during the year.

All states are currently subject to the unwinding of Medicaid continuous coverage after the end of the federal PHE. States with SBEs have a clear advantage in their ability to successfully reach and transition consumers no longer eligible for Medicaid into affordable healthcare coverage by moving the point of transfer with the Exchange in-state. OCI has been working collaboratively with the Governor's Office, the Georgia Department of Community Health (DCH), and the Georgia Department of Human Services (DHS) on the unwinding of Medicaid continuous coverage and implication with the transition to Georgia Access.

Georgia clearly outlined how Georgia Access would support consumers disenrolled from Medicaid to provide for a more streamlined enrollment process on the Exchange and enable continuous coverage in our PHE Unwinding Report provided to CCIIO on May 15, 2023. CCIIO asked follow-up questions during the meeting on July 10, 2023; the State, in turn, sent answers on July 14, 2023. At no point did CCIIO share mandatory requirements for SBEs regarding how they provide support to consumers disenrolled from Medicaid nor did CCIIO provide specific feedback on how Georgia's proposed plan did not meet requirements or align with best practices from other states.

Georgia Access will improve the hand-off that happens today between Medicaid and the Exchange by:

- **Streamlining the transition between programs and implementing auto eligibility.** When someone is denied or terminated from Medicaid, their information will be sent directly to Georgia Access which runs auto-eligibility. The consumer will automatically receive a notice informing them of their eligibility for financial assistance and how to select and enroll in a plan on Georgia Access.

- **Granting a 90-day SEP for disenrolled Medicaid members.** Medicaid beneficiaries who are disenrolled will have up to 90 days to enroll in coverage on Georgia Access through an SEP, compared to 60 days on HealthCare.gov. Eligibility for Exchange coverage will begin retroactively immediately following the Medicaid end date.

By denying Georgia approval to implement an SBE for OE 2024, CCIIO is preventing disenrolled Medicaid members within our State from benefiting from an improved transition experience to Exchange coverage.

In addition, CCIIO also raised concerns with the strain on Medicaid staff from the volume of redeterminations, as well as the unrelated 1115 waiver's implementation that is operated by DCH, a different agency. No state has ever been denied the right to go live as an SBE based on another program being implemented by a different government agency.

Finally, CCIIO asserts that because Georgia would be the first SBE to implement the same Enhanced Direct Enrollment (EDE) structure used by HealthCare.gov, more time is needed to ensure that private sector partners are prepared. This assertion fails to recognize that this EDE structure was the basis of the original Georgia Access from the 1332 Waiver, which was ready to go live for 2023, prior to CCIIO revoking the waiver just before OE. The State has worked closely with these partners and has clear plans for testing and blind audits to ensure their readiness prior to go-live for OE 2023. Furthermore, the Georgia Access state portal would still be ready to go live even if some of the partners were not able to complete testing in time for participation for OE 2024, and the State had contingency plans in place in the event this potential scenario actually materialized.

On June 26, 2023, at the request of CCIIO, the State provided a report summarizing the Georgia Access EDE program and outlining the list of differences between the Georgia Access EDE program and CCIIO's EDE program; the differences were minimal. With this report, the State also provided detailed documentation previously shared with EDE Partners in order to help them meet Georgia Access standards while adhering to federal regulations. The State did not receive any feedback on this report or accompanying documentation, nor did the State receive any indication from CCIIO that Georgia had not adequately prepared the partners for the transition. It's also worth noting that, according to CCIIO's own estimates, over half of all Georgians enrolled in Exchange coverage choose an enrollment mechanism other than Healthcare.gov. For hundreds of thousands of consumers – both those covered through the Exchange as well as the uninsured in the state—HealthCare.gov does not work.

Georgia's EDE partners and issuers have now experienced two false starts as a result of CCIIO's actions. CMS has continued to erode the trust of these partners and the State of Georgia with respect to the federal government's willingness to allow Georgia Access to go live.

The State is prepared to be amenable to the phased SBE approach.

Despite our disagreement with CCIIO's assessment and decision based on the reasons outlined above, we believe it is in the best interest of Georgia residents and our partners to have clarity for how consumers will shop for and enroll in coverage this fall. The requested SBE-FP Blueprint is being submitted concurrently with this letter. The State is prepared to be amenable to the phased

SBE approach. However, since CCIIO waited until only a few months prior to OE 2024 to deny Georgia's request to be an SBE, the state would request that CCIIO give a number of assurances with respect to the state's readiness for OE 2025.

We have significant reservations and concerns with how CCIIO has operated in bad faith and without transparency. We are further concerned that CCIIO is treating Georgia differently than other states. Georgia and our partners, including issuers and EDEs, have expended significant time and resources to move Georgia's Exchange off the federal platform. We have worked closely with CCIIO to provide information and demonstrations of readiness for over two years in pursuit of this goal. We have operated in good faith under the assumption that if the State met the mandatory benchmarks for readiness, both under the 1332 Waiver and under Exchange authority, that we would be granted approval to move our Marketplace off the federal platform.

For two years in a row, approval to transition off the federal Exchange has been revoked by CMS leadership at the last minute without citing any concrete operational or technical deficiencies to justify these determinations. Twice this has been a costly exercise for Georgia and its partners. This repeat behavior has left leadership across our state under the impression that the federal agency is not interested in nor willing to treat Georgia as a true partner in this endeavor as it has with other states.

Under the Patient Protection and Affordable Care Act, states are vested with the right to implement and operate their own Exchanges to best serve the needs of their residents and expand access to affordable, quality health insurance. The federal government's obligation is to provide Exchange only in the event a state is either unwilling or unable to do so. This is not the case for the State of Georgia.

We recognize that CCIIO has an obligation to ensure state readiness when transitioning consumers off the federal Exchange to minimize losses in coverage. But it is also the expectation that CCIIO will apply fair and equitable standards across all states in its assessment of readiness. We are gravely concerned that CCIIO will continue apply a different standard to Georgia.

We are hesitant to move forward in good faith, continue to expend state resources for a third time, or ask our partners to do the same, without the following assurances from CCIIO for SBE readiness for OE 2025:

1. CCIIO will honor the readiness activities and demonstrations completed by Georgia to date and acknowledge that the State currently meets Blueprint requirements for eligibility determinations for qualified health plans (QHPs) and Advance Payments of the Premium Tax Credit (ATPCs), as well as assessments for Medicaid and PeachCare for Kids® (the State's Children's Health Insurance Program (CHIP)) per the latest ORR tracker shared with the State on 7/21/2023. Indicative of this, CCIIO will not require the State to repeat these completed ORR activities for OE 2025.
2. CCIIO will acknowledge that the SBE Single Streamlined Application with the required changes identified by CCIIO on 7/21/2023 for the SBE meets the Blueprint requirements and no further gap analysis or demonstrations will be required.

3. CCIIO will share a definitive list of mandatory, regulatory operational and technical deficiencies for Georgia Access that exist as of 7/27/2023. This is critical for the State to be able to close any gaps that may exist and ensure alignment with how other states have met the same requirements. To date, CCIIO has not cited any concrete deficiencies of this nature that would prevent State's ability to go-live as an SBE for OE 2024.
4. CCIIO will not introduce any new requirements for Georgia's readiness for OE 2025 that have not already been shared and agreed upon as of 7/27/2023.
5. CCIIO and the IRS will grant a 3-year Authority to Connect (ATC) effective 8/1/2023 based on current compliance with all requirements and readiness.
6. Completed Federal Data Services Hub (FDSH) testing performed in 2023 in preparation for OE 2024 will be accepted as fulfilling the Blueprint requirement for OE 2025.
7. CCIIO will limit any future review and approval of SBE readiness to items specifically under the Exchange's authority, rather than continue to request that Georgia Access make changes to Medicaid systems, notices, or outreach that are outside the authority of the SBE and CCIIO.
8. CCIIO will provide Georgia a definitive list of federal requirements as they exist today for outreach activities and spending that a State must meet for SBE readiness for OE 2024 and OE 2025. This must include transparency regarding the federal government's total spend and activities in Georgia specifically for the Exchange outreach for 2022 and 2023 for comparative purposes. It must also include examples from other state's outreach plans which were granted federal approval and clearly identify how those plans differ from Georgia's proposed plan and where the gaps are in Georgia's plans under federal regulations.
9. CCIIO will provide Georgia a definitive list of required regulatory items that CCIIO believes the website was not in compliance with based on the demonstration last provided on 7/24/2023 under 45 CFR 155.205(b) rather than continue to provide feedback based on the personal opinions of staff. This is necessary to ensure Georgia meets regulatory requirements and is held to the same standards as other states, rather than continue to chase a never-ending feedback loop of opinions in which readiness can never be granted.

Finally, we are seeking a significant reduction in the user fee collected by CCIIO for PY 2024 for Georgia Access as an SBE-FP. This is necessary to recoup the significant resource and financial investments made by the State to demonstrate readiness for an SBE for OE 2024. CCIIO has not been transparent from the beginning that it would not grant approval of the SBE based on the timing of the Blueprint submission and the result has been costly to the State.

We can arrange a time in the coming week to discuss the terms of the potential transition.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. King". The signature is fluid and cursive, with the first name "John" being the most prominent.

John F. King
Commissioner of Insurance and Safety Fire
State of Georgia

cc: Jeff Grant, CCIIO Deputy Director for Operations
Jeff Wu, CCIIO Deputy Director for Policy
Gregg Conley, Georgia OCI Executive Counsel
Cheryl Gardner, Georgia Access Executive Director