

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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PLANNED PARENTHOOD)
SOUTHEAST, INC., <i>et al.</i> ,)
)
Plaintiffs,)
)
v.) Civil Action No. 1:21-cv-00117 (JEB)
)
XAVIER BECERRA, <i>et al.</i> ,)
)
Defendants,)
)
and)
)
STATE OF GEORGIA,)
)
Intervenor-Defendant.)
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JOINT STATUS REPORT

Pursuant to the Court’s minute order of March 6, 2023, the parties respectfully submit this status report.

1. Plaintiffs filed their Complaint on January 14, 2021. *See* Compl., ECF No. 1. The Complaint challenges the “Georgia Access Model,” a portion of the State Innovation Waiver requested by Intervenor-Defendant, the State of Georgia, under section 1332 of the Affordable Care Act and approved on November 1, 2020, by the Secretaries of Health and Human Services and the Treasury. Plaintiffs allege, among other things, that the Georgia Access Model “violates the statutory guardrails” of section 1332 and would “eliminat[e] Georgia’s reliance on healthcare.gov without creating an Exchange in its place.” *Id.* ¶¶ 4, 77.

2. On August 9, 2022, Defendant Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, wrote to Grant Thomas, Director of the Office of

Health Strategy and Coordination in the Georgia Governor's Office of Planning and Budget, suspending implementation of the Georgia Access Model. *See* ECF Nos. 33 & 33-1 Ex. B.

3. On February 13, 2023, Governor Brian Kemp of Georgia sent a letter to Dr. Ellen Montz, Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight at the Centers for Medicare & Medicaid Services, on behalf of the State of Georgia, declaring Georgia's intent to establish a State-based Exchange that would go live on November 1, 2023.¹

4. On March 6, 2023, the Court stayed this case "until Federal Defendants make a decision on Georgia's application to establish and operate a State-based Exchange." Minute Order, Mar. 6, 2023. The Court ordered Federal Defendants to inform the Court within two business days of when such a decision was made. *Id.*

5. Federal Defendants hereby inform the Court that, on July 27, 2023, the Department of Health and Human Services conditionally approved Georgia to operate a State-based Exchange (SBE) for Plan Year 2025 and to operate a State-based Exchange on the Federal Platform (SBE-FP) for Plan Year 2024, contingent on confirmation from the state by August 4, 2023.² The

¹ *See* <https://www.cms.gov/files/document/exchange-declaration-intent-021323.pdf>.

² An SBE performs all the functions of an Exchange as specified under 45 C.F.R. § 155.200 including but not limited to qualified health plan (QHP) certification, eligibility determinations, enrollment, and consumer assistance. An SBE-FP performs specific functions of an Exchange as specified under 45 C.F.R. § 155.200(f), including but not limited to QHP certification and certain consumer assistance, such as a Navigator and assister program, but relies on the Federal Healthcare.gov platform to perform eligibility and enrollment and associated support functions. *See* 45 C.F.R. §§ 155.20; 155.200 155.302(a)(1); 155.400(h); *see also* Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017, 81 Fed. Reg. 12,204, 12,205, 12,244-46 (Mar. 8, 2016).

approval letter is available on the Department's website, <https://www.cms.gov/files/document/ga-conditional-approval-letter.pdf>.

6. In accordance with the Court's March 6, 2023 minute order, the parties will submit another joint status report on or before August 28, 2023 reflecting their positions on how this litigation should proceed.

Dated: July 31, 2023

Respectfully submitted,

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