

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

The parties submit this status report pursuant to the Court’s minute order of March 6, 2023.¹

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.

¹ A motion for a one-day extension of time in which to file this Joint Status Report is being filed concurrently.

2. On August 9, 2022, Defendant Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services (CMS), 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, 2023.²

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. The Court also ordered the parties “to file a status report 30 days after any such decision reflecting their positions on how this litigation should proceed.” *Id.*

5. On July 31, 2023, the parties informed 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 (PY) 2025 and to operate a State-based Exchange on the Federal Platform (SBE-FP) for PY 2024.³ The conditional approval letter noted that, “due to the

² *See* <https://www.cms.gov/files/document/exchange-declaration-intent-021323.pdf>.

³ 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

need to prepare the applicable systems in time for Open Enrollment, Georgia has until August 4th to notify CMS that it will pursue the transition to an SBE-FP for PY 2024, and to submit its revised Blueprint Application. If Georgia does not provide CMS with this notice by August 4th, CMS will continue to operate [a Federally-facilitated Exchange (FFE)] in Georgia for PY 2024.”⁴

6. On August 4, 2023, Georgia responded that the State was “prepared to be amenable to the phased SBE approach” and submitted its SBE-FP Blueprint Application for PY 2024.⁵ CMS and Georgia are currently working together to ready the SBE-FP for the PY 2024 Open Enrollment period, which begins on November 1, 2023.

7. The parties propose to continue the stay until after the PY 2024 Open Enrollment period officially begins, and for the parties to submit another joint status report on or before November 15, 2023 reflecting their positions on how this litigation should proceed.

Dated: August 29, 2023

Respectfully submitted,

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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).

⁴ See <https://www.cms.gov/files/document/ga-conditional-approval-letter.pdf>.

⁵ See <https://oci.georgia.gov/news/2023-08-08/georgia-access-approval-response-letter>.

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