

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PLANNED PARENTHOOD SOUTHEAST,
INC., *et al.*,

Plaintiffs,

V.

XAVIER BECERRA, *et al.*,

Defendants,

and

STATE OF GEORGIA,

Intervenor-Defendant.

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

**STATUS REPORT AND CONSENT MOTION TO EXTEND STAY PENDING
FEDERAL DEFENDANTS' FURTHER EVALUATION OF THE GEORGIA ACCESS
MODEL**

Federal Defendants respectfully move, with the consent of all other parties, to extend the stay in this case until February 9, 2022, while they reevaluate the challenged waiver, including via a 60-day federal comment period open from November 9, 2021 through January 9, 2022. In support of this motion, Federal Defendants state:

1. Plaintiffs filed their Complaint on January 14, 2021. *See* Compl., ECF No. 1. This case is currently stayed through November 12, 2021. *See* Minute Order of September 14, 2021.

2. Plaintiffs’ Complaint challenges the “Georgia Access Model,” a portion of the State Innovation Waiver requested by Intervenor-Defendant, the State of Georgia, under 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 of the Affordable Care Act. Compl. ¶ 4.

3. On June 3, 2021, Defendant Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, sent a letter to Brian Kemp, Governor of Georgia, on behalf of the U.S. Department of Health and Human Services and the U.S. Department of the Treasury (“the Departments”), requesting additional analysis of the Georgia Access Model by July 3, 2021, in order “to evaluate whether the Georgia Access Model will satisfy the statutory guardrails” in light of relevant changes to federal law and policy. *See* ECF No. 21 Ex. A at 6.

4. The Departments and the State of Georgia have subsequently exchanged additional correspondence about the Departments’ June 3 request.¹

5. The Departments continue to evaluate whether the Georgia Access Model satisfies the statutory guardrails in light of relevant changes to federal law and policy. Most recently, on November 9, 2021, the Departments opened a 60-day public comment period, to receive input on the impact of changes in federal law and policy on the Georgia Access Model, as approved on November 1, 2020, including whether the Georgia Access Model continues to meet the guardrails in light of these changed circumstances. The public comment period is scheduled to close on January 9, 2022.²

¹ *See* July 2, 2021 letter from Grant Thomas to Chiquita Brooks-LaSure, *available at* <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Response-1332-GA-request-Updated-GA-Analysis-Letter.pdf>; July 30, 2021 letter from Chiquita Brooks-LaSure to Grant Thomas, *available at* <https://www.cms.gov/files/document/response-1332-ga-depts-follow-letter.pdf>; August 26, 2021 letter from Grant Thomas to Chiquita Brooks-LaSure, *available at* <https://www.cms.gov/files/document/1332-georgia-letter-cms-82621.pdf>.

² *See* November 9, 2021 letter from Chiquita Brooks-LaSure to Grant Thomas, *available at* <https://www.cms.gov/files/document/depts-letter-comment20period.pdf>; *see also* Request for Comment on the Georgia Access Model, *available at* <https://www.cms.gov/files/document/1332-ga-access-public-comment-request.pdf>.

6. Good cause exists to extend the stay because the Departments' evaluation could affect the outcome of this litigation and it is therefore prudent to stay this case to allow that evaluation to continue.

7. Accordingly, Federal Defendants request that the Court extend the stay in this case until February 9, 2022—one month after the public comment period closes—for Federal Defendants to conduct further review of whether the Georgia Access Model continues to meet Section 1332 of the ACA's statutory guardrails, with the parties to submit a status report on February 9, 2021.

8. Counsel for Federal Defendants have conferred with counsel for the other parties, who consent to the requested relief.

Dated: November 12, 2021

Respectfully submitted,

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