



July 30, 2021

VIA ELECTRONIC MAIL: grant.thomas@georgia.gov

Grant Thomas
Director, Governor's Office of Health Strategy and Coordination
Office of the Governor
115 State Capitol
Atlanta, Georgia 30334

Dear Mr. Thomas:

This letter is in response to your letter dated July 2, 2021,¹ to the U.S. Department of Health and Human Services (HHS) and the Department of Treasury (collectively, the Departments). On June 3, 2021, the Departments sent the State of Georgia (the State) a letter² requesting an updated analysis to reflect the changes in circumstances that may impact the “without-waiver” baseline with which Part II of Georgia’s State Innovation Waiver (Georgia waiver), the Georgia Access Model, must be compared to determine ongoing compliance with statutory requirements. Georgia’s updated analysis was due July 3, 2021. The Secretary of HHS asked me to send this letter on behalf of the Departments.

As previously stated, the Departments remain committed to working with state partners to advance health care coverage policies. Through section 1332 waivers, the Departments aim to assist states with developing health insurance markets that expand coverage, lower costs, and ensure that health care truly is a right for all Americans. As you are aware, on November 1, 2020, the Departments approved the Georgia waiver under section 1332 of the Patient Protection and Affordable Care Act (ACA), the first part of which would not take effect until January 1, 2022 (Plan Year (PY) 2022).³ In Part II of the waiver, Georgia would implement and operate the Georgia Access Model, beginning in PY 2023. As part of the waiver approval, the Departments and the State signed the special terms and conditions (STCs) of the waiver, which further define the Departments’ and the State’s responsibilities with respect to the Georgia waiver, including the Departments’ oversight responsibilities.

The State’s July 2 letter incorrectly characterizes the Departments’ June 3 letter as attempting “to reopen the approval of the waiver,” and contends that the Departments’ request for an updated analysis does not follow the process described in the STCs under the approved Georgia waiver.

¹ Georgia’s letter in response to Departments, dated July 2, 2021, is available: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Response-1332-GA-request-Updated-GA-Analysis-Letter.pdf>

² Departments’ Letter Requesting Updated Georgia Analysis, dated June 3, 2021, is available: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-Request-Updated-GA-Analysis-Letter.pdf>

³ The Georgia 1332 waiver approval package is available: https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-/1332-GA-Approval-Letter-STCs.pdf.

Section 1332 of the ACA provides the Secretary of HHS and the Secretary of the Treasury (collectively, the Secretaries) with discretion to waive specific provisions of the ACA only if the Secretaries determine that the state’s waiver application meets statutory requirements (referred to as the statutory guardrails) and certain procedural requirements specified in regulation. As provided in Georgia’s STCs, the Departments have the authority to request information regarding an approved waiver as part of their continued monitoring and oversight authority and retain discretion to “amend, suspend, or terminate the waiver . . . as necessary to bring the waiver . . . into compliance with changes to existing applicable federal statutes enacted by Congress or applicable new statutes enacted by Congress.”⁴

As noted in the Departments’ June 3 letter, there have been changes in federal law and policies since the initial approval of the Georgia waiver on November 1, 2020, including the American Rescue Plan Act of 2021, as well as Executive Order 13985 and Executive Order 14009. In light of these recent changes, the Departments are reviewing all section 1332 waivers for compliance with the guardrails. Accordingly, the Departments requested a revised analysis of the Georgia Access Model as part of their responsibility to conduct oversight and monitoring, and in accordance with STCs 7, 14, 15, and 17, 31 C.F.R. § 33.120(a)(1) and (f), and 45 C.F.R. § 155.1320(a)(1) and (f), to ensure that approved section 1332 waivers continue to meet the statutory guardrails. The STCs expressly provide that Georgia “must submit all requested data and information to the Departments” as part of the Departments’ evaluation of the Georgia Access Model. See Georgia STC 15 for more information.

Although the State did not submit the requested updated information, along with the corresponding analysis, the Departments are providing the State an additional 30 days from the date of this letter to comply with that request. In the event the State does not submit the requested updated analysis by August 29, 2021, the Departments may consider the State to be in violation of the STCs. Furthermore, the Departments may proceed to review the continued compliance of Part II of the waiver with the statutory guardrails set forth in section 1332(b)(1)(A) – (D) of the ACA, without the benefit of updated information from the State. The Departments will take appropriate action and will notify the state in the event they determine that the State has materially failed to comply with the STCs or that Part II of the waiver has failed to meet the statutory guardrails.

As we previously noted, the State may also submit any additional information that, in the State’s view, will aid the Departments in evaluating whether the Georgia Access Model continues to meet the statutory guardrails. Once the Departments complete their review of the State’s updated analysis, any timely submitted public comments, other available information, and any amendment requests, the Departments will promptly notify the State in writing of their determination.

⁴ See GA STC 7 (Changes in Applicable Federal Laws) and GA STC 15 (Federal Evaluation), available at: https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-/1332-GA-Approval-Letter-STCs.pdf. Also see 31 C.F.R. § 33.120(a)(1) and (f) and 45 C.F.R. § 155.1320(a)(1) and (f). Also see GA STC 14 and 17.

We look forward to working with you on ways to provide residents of Georgia with access to affordable health care coverage. Please send any questions regarding this request or official correspondence concerning the waiver to stateinnovationwaivers@cms.hhs.gov.

Sincerely,

A handwritten signature in blue ink that reads "Chiquita Brooks-LaSure". The signature is written in a cursive style with a large initial "C" and "B".

Chiquita Brooks-LaSure

cc: Mark Mazur, Deputy Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Brian P. Kemp, Governor, State of Georgia
Gen. John F. King, Commissioner, Georgia Office of the Commissioner of Insurance and Safety Fire
Matthew Krull, Health Policy Counsel, Georgia Department of Community Health