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SB 106 - Patients First Act

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SOCIAL SERVICES

Public Assistance: Amend Article 7 of Chapter 4 of Title 49 and Title 33 of the Official Code of Georgia Annotated, Relating to Medical Assistance and Insurance, Respectively, so as to Authorize the Department of Community Health to Submit a Section 1115 Waiver Request to the United States Department of Health and Human Services Centers for Medicare and Medicaid Services; Authorize the Governor to Submit a Section 1332 Innovation Waiver Proposal to the United States Secretaries of Health and Human Services and the Treasury; Provide for Implementation of Approved Section 1332 Waivers; Provide for Expiration of Authority; Provide for Legislative Findings; Provide for Related Matters; Provide for a Short Title; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 49-4-142.3 (new); 33-1-26 (amended)
BILL NUMBER:	SB 106
ACT NUMBER:	4
GEORGIA LAWS:	2019 Ga. Laws 2
SUMMARY:	The Patients First Act amends both Title 49 and Title 33 of the Official Code of Georgia Annotated, which allows the state to apply for two federal waivers. One being the Section 1115 waiver to the Social Security Act. The second being the Section 1332 waiver to the Affordable Care Act. Section 1115 waivers apply to Medicaid and may be sought to include a maximum income threshold up to 100% of the Federal Poverty Level. The Section 1332 innovation waiver applies to insurance coverage generally.
EFFECTIVE DATE:	March 27, 2019

History

The Social Security Act (SSA) and the Patient Protection and Affordable Care Act (ACA) are the authorizing documents for the Section 1115 and Section 1332 waivers that this legislation allows.¹ President Barack Obama signed the ACA on March 23, 2010.² The Patients First Act (the Act) focuses on fundamentally changing the health insurance industry by affecting regulation of insurance coverage and access.³ Specifically, the ACA gives states the option to implement programs to establish health insurance exchanges and to expand Medicaid coverage.⁴ The requirements imposed by the ACA include: qualified health benefits plans, health insurance exchanges, reduced cost sharing in qualified health benefits plans, premium subsidies, employer mandates, and individual mandates.⁵ Notably, the ACA provides a federal funding match to states that expand Medicaid to up to 138% of the Federal Poverty Level (FPL).⁶ Section 1115 waivers are not a requirement, but an alternative to traditional expansion.⁷

The Medicaid program exists to provide health coverage to children under nineteen years of age, pregnant women, families with dependent children, the elderly, and the disabled.⁸ In Georgia, this

1. *The Center For Consumer Information & Insurance Oversight: Section 1332 State Innovation Waivers*, CMS.GOV, https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-.html [https://perma.cc/4DVG-JUJE] (last visited Sept. 11, 2019) [hereinafter *Center for Consumer Information*]; *About Section 1115 Demonstrations*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html> [https://perma.cc/2NV4-ASDA] (last visited Sept. 11, 2019) [hereinafter *About Section 1115*].

2. *Health Law and Policy: Affordable Care Act (ACA) & Health Care and Education Reconciliation Act of 2010 (HCERA)*, U. MINN. L. SCH. L. LIBR., <https://libguides.law.umn.edu/c.php?g=125769&p=906254> [https://perma.cc/XY4V-YHAC] (last updated Aug. 28, 2019, 11:08 AM).

3. *Id.*

4. TOMI OGUNDIMU, PATRICE ELLER & MARIANNE UDOW-PHILLIPS, GUIDE TO STATE REQUIREMENTS AND POLICY CHOICES IN THE AFFORDABLE CARE ACT, CTR. FOR HEALTHCARE RESEARCH & TRANSFORMATION 1 (2011).

5. *Id.*

6. Robin Rudowitz & MaryBeth Musumeci, “*Partial Medicaid Expansion*” with ACA Enhanced Matching Funds: Implications for Financing and Coverage, HENRY KAISER FAM. FOUND. (Feb. 20, 2019), <https://www.kff.org/medicaid/issue-brief/partial-medicaid-expansion-with-aca-enhanced-matching-funds-implications-for-financing-and-coverage/> [https://perma.cc/34YA-EBRT].

7. *Id.*

8. *Georgia Medicaid Waivers*, GA. COUNCIL ON DEVELOPMENTAL DISABILITIES, <https://gcd.org/georgia-medicaid-waivers.html> [https://perma.cc/EG94-9W4P] (last visited Sept. 11,

program is funded by both the state and federal government and the Georgia Department of Community Health.⁹ The Georgia Department of Human Services processes applications to determine Medicaid eligibility.¹⁰

Section 1115 of the SSA allows the Secretary of Health and Human Services to approve “experimental, pilot, or demonstration projects” likely to promote objectives of the Medicaid program.¹¹ The SSA boasts a longer history than the ACA. President Franklin D. Roosevelt signed the SSA into law on August 14, 1935.¹² The SSA provides for national needs through unemployment insurance, old-age assistance, aid to dependent children, and grants to the states to provide medical care—to name a few.¹³ Because each state’s population differs, the waivers allow states to more adequately tailor state-specific policy approaches to serve their Medicaid populations.¹⁴

Section 1332 of the ACA allows states to apply for “State Innovation Waivers.”¹⁵ States can petition to pursue innovative strategies to provide access to health insurance for citizens that may not fall specifically within what the ACA requires.¹⁶ The plans must, however, offer coverage equivalent to what is offered on the federal exchange, cover just as many residents, and not increase the federal deficit.¹⁷ If such petition is granted, the strict requirements of the ACA are waived and the state still retains the basic protections and benefits of the ACA.¹⁸

In 2018, the Trump administration announced significant changes to the Section 1115 and Section 1332 waiver programs.¹⁹ The

2019).

9. *Id.*

10. *Id.*

11. *About Section 1115*, *supra* note 1.

12. *Historical Background and Development of Social Security*, SOC. SECURITY ADMIN., <https://www.ssa.gov/history/briefhistory3.html> [<https://perma.cc/E2VS-2KCH>] (last visited Sept. 11, 2019).

13. *The Social Security Act of 1935*, SOC. SECURITY ADMIN., <https://www.ssa.gov/history/35act.html> [<https://perma.cc/4DQB-GYGU>] (last visited Sept. 20, 2019).

14. *About Section 1115*, *supra* note 1.

15. *Center for Consumer Information*, *supra* note 1.

16. *Id.*

17. OGUNDIMU ET AL., *supra* note 4.

18. *Center for Consumer Information*, *supra* note 1.

19. See Memorandum from the Dep’t of Health and Human Servs. to State Medicaid Dirs. (Jan. 11,

Centers for Medicare and Medicaid Services (CMS) announced a new policy on January 11, 2018, concerning Section 1115 waivers.²⁰ Though still subject to the full federal review process, state efforts to incentivize participation in work or other community engagement as a requirement to obtain Medicaid eligibility or coverage for certain beneficiaries will be supported by the CMS.²¹ Thus, this new policy expands the SSA's "demonstration" projects to those plans that require work or community involvement for specific beneficiaries as long as such plans promote health and wellness.²²

On October 22, 2018, CMS and the United States Department of the Treasury issued new guidance on Section 1332 ACA waivers.²³ Before the new guidance, the waivers allowed for deviation from the ACA's strict requirements on states. However, the Trump administration's new guidance expands the flexibility of a Section 1332 waiver significantly.²⁴ This new flexibility includes:

Allow[ing] states to provide consumers with plan options that best meet their needs, while, at the same time, ensuring people, including those with pre-existing conditions, retain access to the same level of coverage available today without the waiver; [c]ontinu[ing] to require that a comparable number of people have coverage, but expands

2018), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf> [<https://perma.cc/P6LD-4DRY>]; see also Press Release, U.S. Ctrs. for Medicare & Medicaid Servs., Trump Administration Announces State Relief and Empowerment Waivers to Give States the Flexibility to Lower Premiums and Increase Choices for their Health Insurance Markets (Oct. 22, 2018), <https://www.cms.gov/newsroom/press-releases/trump-administration-announces-state-relief-and-empowerment-waivers-give-states-flexibility-lower> [<https://perma.cc/Z5KH-R76Y>] [hereinafter Trump Admin. Announces].

20. Memorandum, Dep't of Health and Human Servs., *supra* note 19.

21. *Id.* ("Such programs should be designed to promote better mental, physical, and emotional health in furtherance of Medicaid program objectives. Such programs may also, separately, be designed to help individuals and families rise out of poverty and attain independence, also in furtherance of Medicaid program objectives.")

22. *Id.* (this does not include beneficiaries who are pregnant, elderly, disabled, or children).

23. Trump Admin. Announces, *supra* note 19.

24. *Id.*

These waivers are called State Relief and Empowerment Waivers to reflect this new direction and opportunity. . . . Now, states will have a clearer sense of how they can take the lead on making available more insurance options, within the bounds of the Affordable Care Act, that are fiscally sustainable, private sector-driven, and consumer-friendly.

Id.

the definition of coverage to include more types of coverage, such as short-term plans; [p]rovid[ing] greater flexibility for states to consider improvements in comprehensiveness and affordability for state residents as a whole versus the prior focus on specific populations; [s]upport[ing] increased variation and flexibility for states that may want to leverage components of the Federal Exchange platform to implement new models; and [p]rovid[ing] flexibility for states to meet the state legislative authority requirement. The guidance clarifies that in certain circumstances, existing state legislation that provides statutory authority to enforce ACA provisions and the state plan, combined with a duly-enacted state regulation or executive order, may satisfy the requirement that the state enact a law.²⁵

The Trump administration hopes this newfound flexibility will decrease premium costs and increase access to a variety of choices in the health insurance market.²⁶

Georgians approached then-Secretary of State Brian P. Kemp (R) while he was on the campaign trail for Georgia governor, expressing their concerns over the skyrocketing cost of their health insurance premiums.²⁷ Upon his election as Georgia's Governor, Kemp decided it was time to put together options for healthcare specific to Georgia's citizens.²⁸ Because the President's administration had recently given new guidance to incentivize using Section 1115 and Section 1332 waivers, Governor Kemp decided pursuing waivers was

25. *Id.*

26. *Id.* CMS Administrator Seema Verma said, "The Trump Administration inherited a health insurance market with skyrocketing premiums and dwindling choices." *Id.*

27. Telephone Interview with Candice Broce, Commc'ns Dir., Deputy Legal Counsel to Governor Brian Kemp, (May 17, 2019) (on file with the Georgia State University Law Review) [hereinafter Broce Interview].

On the campaign trail, the recurring story that he would hear from the average hard-working Georgian was that they could not afford their health insurance. They were, in a lot of circumstances, paying the same or more for their health insurance premium than their mortgage. It was for lackluster coverage. [The Governor] kept hearing that from people, and part of that is that this system was failing, and it still is failing under Obamacare.

Id.

28. *Id.*

the best course of action.²⁹ On February 13, 2019, the Governor's administration announced the creation and support of legislation entitled the "Patients First Act."³⁰

Bill Tracking of SB 106

Consideration and Passage by the Senate

Senator Blake Tillery (R-19th) sponsored Senate Bill (SB) 106, the "Patients First Act" in the Senate.³¹ The Senate read the bill for the first time on February 14, 2019, and committed the bill to the Health and Human Services Committee.³² On February 20, 2019, the Senate Health and Human Services Committee favorably reported the bill as introduced.³³ Although the bill was favorably supported, many voiced their concerns about the bill's expansion of the FPL threshold to only 100% and not 138%.³⁴ The Senate read the bill for a second time on February 21, 2019.³⁵ On February 26, 2019, the Senate voted to engross the bill by a vote of 35 to 20.³⁶ By voting for engrossment, the Senate blocked any attempt to amend the bill on the Senate floor before the final vote. On the same day, the Senate read the bill a third time, after engrossment.³⁷ The Senate passed the bill as introduced on February 26, 2019, by a vote of 32 to 20.³⁸

29. *Id.*

30. Sanya Mansoor, *Georgia Gov. Brian Kemp Announces Medicaid Waiver Plan*, ASSOCIATED PRESS (Feb. 13, 2019), <https://wgxa.tv/news/local/georgia-gov-brian-kemp-announces-medicaid-waiver-plan> [<https://perma.cc/7YWE-ZBSD>].

31. Georgia General Assembly, SB 106, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20192020/SB/106>.

32. State of Georgia Final Composite Status Sheet, SB 106, May 22, 2019.

33. *Id.*

34. Video Recording of Senate Health and Human Services Committee Meeting at 14 min., 23 sec. (Feb. 29, 2019) (remarks by Kyle Wingfield, President and CEO, Georgia Public Policy Foundation), <https://livestream.com/accounts/26021522/events/8751687/videos/194234029>.

35. State of Georgia Final Composite Status Sheet, SB 106, May 22, 2019.

36. Georgia Senate Voting Record, SB 106, #60 (Feb. 26, 2019).

37. State of Georgia Final Composite Status Sheet, SB 106, May 22, 2019.

38. Georgia Senate Voting Record, SB 106, #65 (Feb. 26, 2019).

Consideration and Passage by the House

Representative Jodi Lott (R-122nd) sponsored SB 106 in the House.³⁹ The House read the bill for the first time on February 27, 2019, and committed the bill to the Special Committee on Access to Quality Healthcare.⁴⁰ On February 28, 2019, the House read the bill for a second time.⁴¹ The House Special Committee on Access to Quality Healthcare favorably reported the bill as introduced on March 21, 2019.⁴² Again, with its favorable passage, many supporters continued to voice concerns about the FPL threshold of 100% as opposed to 138%.⁴³ One speaker argued that limiting income at 100% FPL could leave the state paying more, and takes the risk of only gaining 67% federal government funding compared to a 90% match in federal funds if stretched to 138% FPL.⁴⁴ On March 25, 2019, the House read the bill for the third time.⁴⁵ The House passed the bill as introduced on March 25, 2019, by a vote of 104 to 67.⁴⁶ The Senate sent the bill to Governor Kemp on March 26, 2019.⁴⁷ The Governor signed the bill into law on March 27, 2019, and the Act became effective on March 27, 2019.⁴⁸

The Act

The Act amends Article 7 of Chapter 4 of Title 49 (Social Services) and Chapter 1 of Title 33 (Insurance) of the Official Code of Georgia Annotated.⁴⁹ Both Titles are amended by adding language authorizing the Department of Community Health to submit a Section 1115 waiver request and authorizing the Governor to submit

39. State of Georgia Final Composite Status Sheet, SB 106, May 22, 2019.

40. *Id.*

41. *Id.*

42. *Id.*

43. Video Recording of House Special Committee on Access to Quality Health Care at 28 min., 2 sec. (Mar. 20, 2019) (remarks by Laura Harker, Policy Analyst, Georgia Budget and Policy Institute), <https://youtu.be/a901i1ZNLZo>.

44. *Id.*

45. State of Georgia Final Composite Status Sheet, SB 106, May 22, 2019.

46. Georgia House of Representatives Voting Record, SB 106, #288 (Mar. 25, 2019).

47. State of Georgia Final Composite Status Sheet, SB 106, May 22, 2019.

48. *Id.*

49. 2019 Ga. Laws 2, §§ 1-1 to 3-1, at 2-3.

a Section 1332 waiver proposal.⁵⁰ The overall purpose of the Act is to increase flexibility in tailoring the Medicaid program to Georgia specifically, and to extend affordable, quality coverage to more Georgians.⁵¹

Section 2-1

Section 2-1 adds a new Code section at 49-4-142.3 of the Official Code of Georgia Annotated that authorizes the Department of Community Health to submit a Section 1115 waiver request to CMS.⁵² This waiver request may include an increase in the Medicaid income threshold of up to 100% of the FPL.⁵³ Additionally, this section provides that the Department may take all necessary steps to implement the waiver program, if the waiver is approved by CMS, without further legislative action.⁵⁴

Section 3-1

Section 3-1 summarizes the General Assembly's findings that form the basis for the Act.⁵⁵ These findings include a recent decrease in private sector health insurance choices and increased health insurance costs.⁵⁶ This section also highlights the benefits that Section 1332 waivers can provide for the state including the ability to pursue innovative strategies for providing Georgians with access to high quality and affordable health care, and the ability to narrowly tailor the waivers to address state-specific problems.⁵⁷ The findings indicate the state may seek to use reinsurance programs, tax credits,

50. 2019 Ga. Laws 2, at 2.

51. Ariel Hart, *Georgia Legislature's Impact on Health Care this Year Was 'Pretty Big'*, ATLANTA J.-CONST. (Apr. 7, 2019), <https://www.ajc.com/news/state—regional-govt—politics/georgia-legislature-impact-health-care-this-year-was-pretty-big/k2v3zJ4rf6PMwI6dDNE5CK/> [https://perma.cc/FQ2G-PMKK]; *Bill Analysis: SB 106 Aims to Improve Access to Health Care but Falls Short*, GEORGIANS FOR HEALTHY FUTURE (Mar. 3, 2019, 10:25 PM), <https://healthyfuturega.org/2019/03/03/sb-106-aims-to-improve-access-to-health-care-but-falls-short/page/2/> [https://perma.cc/MZ6F-36KL] [hereinafter *Bill Analysis*].

52. 2019 Ga. Laws 2, § 2, at 2.

53. O.C.G.A. § 49-4-142.3 (Supp. 2019).

54. *Id.*

55. 2019 Ga. Laws 2, § 3-1, at 3.

56. *Id.*

57. *Id.*

cost-sharing arrangements, and other innovative methods for meeting its insurance-coverage goals.⁵⁸

Section 3-2

Section 3-2 includes Code section language added to Chapter 1 of Title 33 of the Official Code of Georgia Annotated, which authorizes the Governor to submit applications to the United States Secretaries of Health and Human Services and Treasury for Section 1332 waivers with respect to health insurance coverage or products.⁵⁹ The Code section language also authorizes the state to implement the Section 1332 waivers in a manner consistent with state and federal law.⁶⁰

Analysis

Criticisms of the Act

Although the Act aims to extend affordable, quality coverage to more Georgians, its biggest criticism comes from its limitation of up to 100% of the FPL rather than 138% of the FPL, which comes with a full Medicaid expansion.⁶¹ It is estimated that expanding Medicaid coverage to 100% FPL would cover 240,000 more Georgians.⁶² This limitation, however, still leaves out an estimated 200,000 uninsured Georgia adults who make just more than poverty-level wages.⁶³ In addition, because the ACA provides states with an “enhanced match rate” of government funds to cover 90% of the costs as an incentive to fully expand Medicaid, some view the 100% limitation as a source of increased costs for the state.⁶⁴ Due to the enhanced match rate, increasing coverage to 138% FPL would allow the state to use government funds to provide coverage to more Georgians at a lower

58. *Id.*

59. *Id.*

60. *Id.*

61. *Bill Analysis, supra* note 51.

62. *Id.*

63. *Id.*

64. *Id.*

cost.⁶⁵ An example that supports this viewpoint is Wisconsin's Medicaid expansion to just 100% FPL, which resulted in the state spending \$1.1 billion more to cover 80,000 fewer people.⁶⁶

Another criticism of the Act comes from its broad language, which, as written, allows for waiver proposals that some believe could be harmful to consumers.⁶⁷ For example, if Georgia adopts work requirements like other states have done, it could cause people to lose access to Medicaid, and once it is lost, it takes a full year to regain it even if the work requirements are met.⁶⁸

Positive Effects of the Act

On the other hand, proponents of SB 106 noted that Medicaid waivers, if approved by the federal government, would provide a more tailored way for the state to expand Medicaid coverage for the poor and disabled in comparison to a full Medicaid expansion.⁶⁹ And although the Act only expands Medicaid coverage to include Georgians who make up to 100% of the FPL, it would still mean that hundreds of thousands of Georgians who have no insurance may now receive Medicaid.⁷⁰ It would also mean that hospitals that would have been treating these patients regardless of their ability to pay may finally be paid for treatment, and these patients would also be encouraged to visit physicians for checkups rather than going to the hospital.⁷¹

In addition, the flexibility available with the waivers would give the state the ability to expand Medicaid to the extent that the

65. *Id.*

66. *Id.*; David Wahlberg, *Wisconsin Democrats Try Again for Medicaid Expansion*, WIS. ST. J. (Aug. 6, 2019), https://madison.com/wsj/news/local/health-med-fit/wisconsin-democrats-try-again-for-medicaid-expansion/article_f5ff19ce-d378-552b-9323-68110ca4b760.html [https://perma.cc/MZ6F-36KL].

67. *Bill Analysis*, *supra* note 51.

68. Donna McLeod, *McLeod: Looking at Medicaid Expansion Versus Waivers*, GWINNETT DAILY POST (Apr. 18, 2019), https://www.gwinnettdaily.com/opinion/columnists/mcleod-looking-at-medicaid-expansion-versus-waivers/article_2dfadf9a-6215-11e9-bf31-8bf2db362fb8.html [https://perma.cc/X4VW-24BH].

69. Greg Bluestein, *Brian Kemp: Georgia Will Seek Medicaid Waivers*, ATLANTA J.-CONST. (Jan. 17, 2019), <https://www.ajc.com/news/state-regional-govt-politics/brian-kemp-georgia-will-seek-medicaid-waivers/98Xk7y5BZlwoNLgTDwVINI/> [https://perma.cc/22EF-9VRW].

70. Hart, *supra* note 51.

71. *Id.*

physicians in the state have the capacity to treat the Medicaid population.⁷² Advocates for the Act note that a full Medicaid expansion would risk equipping people with coverage, but no physicians to treat them.⁷³ This flexibility would also allow the state to request payment of what residents would otherwise have received in premium tax credits and cost-sharing reductions, known as “subsidy pass-through funding,” which can be used to create a reinsurance pool to stabilize premiums.⁷⁴

Foreseeable Obstacles

The biggest obstacles to this Act include concerns about the Governor’s increased authority, the risk that Georgia’s proposed waiver would not be accepted, and the recent constitutional challenge to the ACA.⁷⁵ Some view the Act as an “abdication” of the Georgia legislature because, upon approval of a waiver, the Act gives the Governor broad authority to implement the waiver without any final legislative sign-off.⁷⁶ This grant of authority may be considered a contradiction to the state law forbidding the Department of Community Health from causing any expansion of Medicaid without prior legislative approval.⁷⁷

In addition, recent rulings rejecting Medicaid work requirements in other states create a concern that the Governor’s proposed waivers

72. Broce Interview, *supra* note 27.

[The Governor] wanted to put together some options for healthcare in Georgia that were specific to Georgia . . . even if Georgia were to be in a posture to move to full Medicaid expansion we would be equipping people with coverage but no one to see them He knew the underlying concern was that we wouldn’t have enough [physicians] to see them.

Id.

73. *Id.*

74. *Tracking Section 1332 State Innovation Waivers*, KFF (Aug. 29, 2019), <https://www.kff.org/health-reform/fact-sheet/tracking-section-1332-state-innovation-waivers/> [<https://perma.cc/8GEG-N8QB>]; Andy Miller, *Georgia Picks Deloitte to Craft Waiver Plan on Health Coverage*, WABE (June 4, 2019), <https://www.wabe.org/georgia-picks-deloitte-to-craft-waiver-plan-on-health-coverage/> [<https://perma.cc/L9KF-EP89>].

75. Greg Bluestein, *Brian Kemp: Georgia Will Seek Medicaid Waivers*, ATLANTA J.-CONST. (Jan. 17, 2019), <https://www.ajc.com/news/state—regional-govt—politics/brian-kemp-georgia-will-seek-medicaid-waivers/98Xk7y5BZlwoNLgTDwVINI/> [<https://perma.cc/SD45-3N3M>].

76. *Id.*

77. O.C.G.A. § 49-4-142.2 (Supp. 2019).

may not be approved.⁷⁸ Although the Trump administration has allowed several states to impose work requirements for Medicaid recipients, in March 2019, a judge in the Federal District Court for the District of Columbia rejected attempts to impose work requirements as a condition of coverage in Kentucky and Arkansas.⁷⁹ More recently, the same judge also struck down New Hampshire's work requirements in July 2019.⁸⁰ These rulings pose a threat to the Act's implementation due to the likelihood that similar work requirements could be included in the Governor's proposed waivers.

Finally, there is a pending appeal in the Fifth Circuit, *Texas v. United States*, which challenges the constitutionality of the ACA.⁸¹ The federal trial court found the ACA's individual mandate to be unconstitutional, and thus required the entire ACA to be overturned.⁸² As noted above, the ACA is the authorizing document for Section 1332 waivers which means that if a Section 1332 waiver gets approved for Georgia, those waivers could be at risk of being struck down along with the ACA if the Fifth Circuit affirms the trial court's ruling on appeal.⁸³

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78. Electronic Mail Interview with Anthony West, Deputy State Dir., Ams. for Prosperity (May 23, 2019) (on file with the Georgia State University Law Review) [hereinafter West Interview].

There is the risk that the Trump administration will not accept Georgia's proposed waiver. Ironically, the day that the Governor signed this bill, a federal judge blocked the Medicaid work requirements included in the Medicaid waivers of Kentucky and Arkansas—something proponents of this bill said would be an important piece of any waiver.

Id.

79. Abby Goodnough, *Judge Blocks Medicaid Work Requirements in Arkansas and Kentucky*, N.Y. TIMES (Mar. 27, 2019), <https://www.nytimes.com/2019/03/27/health/medicaid-work-requirement.html> [<https://perma.cc/X62S-9ZW9>].

80. Amy Goldstein, *Federal Judge Strikes Down New Hampshire's Medicaid Work Requirements*, WASH. POST (July 29, 2019), https://www.washingtonpost.com/health/federal-judge-strikes-down-new-hampshires-medicaid-work-requirements/2019/07/29/a8e7fb6c-b237-11e9-951e-de024209545d_story.html [<https://perma.cc/L9AX-AWQ2>].

81. MaryBeth Musumeci, *Explaining Texas v. U.S.: A Guide to the 5th Circuit Appeal in the Case Challenging the ACA*, KFF (July 3, 2019), <https://www.kff.org/health-reform/issue-brief/explaining-texas-v-u-s-a-guide-to-the-5th-circuit-appeal-in-the-case-challenging-the-aca/> [<https://perma.cc/E38Z-DQRN>].

82. *Texas v. United States*, No. 4:18-cv-00167-O, 2018 U.S. Dist. LEXIS 222345, at *11–13 (N.D. Tex. Dec. 30, 2018).

83. *See supra* History.