

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



December 22, 2023

Lynnette R. Rhodes
Chief Health Policy Officer
Medical Assistance Plans Division
Georgia Department of Community Health
2 Peachtree Street, NW, 36th Floor
Atlanta, Georgia 30303-3159

Dear Director Rhodes:

Thank you for your November 16, 2023, letter requesting a reconsideration of the October 5, 2023 decision¹ from the Centers for Medicare & Medicaid Services (CMS) to not extend the effective date of the Georgia Pathways to Coverage section 1115 demonstration (Project Number 11-W-00342/4), which will expire September 30, 2025.

Your letter stated that Georgia's February 24, 2023 request to "amend and extend the effective dates" of the Georgia Pathways to Coverage demonstration (hereafter referred to as the Pathways demonstration), by adding three years to the demonstration approval period, should not be considered an extension request. Rather, you indicated in the November 16, 2023 letter that the state's request is to allow Georgia to implement the Pathways program for the originally authorized five-year term in light of "the lengthy delay caused by CMS's unlawful rescission of key program terms and the subsequent need for litigation."

A demonstration implementation period that is shorter than the period for which the necessary demonstration authorities are approved is not unique to the Pathways demonstration, and many states experience delayed implementation of their demonstration projects (or initiatives within a demonstration project) for various reasons. Such reasons could be related to operational constraints, readiness delays, and/or other factors; as a result, states may be unable to implement a certain demonstration authority immediately when the authority is initially approved.

States have the option to formally request an extension of a demonstration beyond the approved end date. CMS must consider Georgia's request to extend the Pathways demonstration approval period consistent with how we approach all state requests for demonstration extensions, which is uniform notwithstanding any implementation delays the requesting state may have experienced with respect to a particular demonstration. As CMS stated in our October 5, 2023 letter, Georgia

¹ Letter from CMS to Georgia, October 5, 2023. Available at: <https://www.medicare.gov/sites/default/files/2023-10/ga-cms-ltr-to-state-10052023.pdf>

must submit an extension request that complies with 42 CFR 431.412(c) for CMS to be able to consider extending the demonstration approval period.

The state writes in its recent letter that the Georgia Department of Community Health (DCH) was unable to implement the Pathways program due to the period of CMS reconsideration and subsequent litigation. However, CMS did not withdraw the authorities for the qualifying hours and activities requirement and the premium requirement of the Pathways demonstration until December 23, 2021,² and at the time of the CMS withdrawal of qualifying hours and activities requirement and the premium requirement, CMS clarified that the state could continue to implement other aspects of the approved demonstration, notably the expansion in coverage to adults with family income below 95 percent of the federal poverty level. Further, prior to the withdrawal of the above listed authorities, the state sent several letters to CMS indicating that it voluntarily was delaying implementation; in a letter dated July 27, 2021, Georgia stated that it anticipated delaying implementation until the end of calendar year 2021 as the state “assess[ed] options and opportunities to resolve concerns CMS identified . . . and to find a mutually agreeable path forward to increase access to healthcare for Georgia’s most vulnerable populations.”³ Until December 23, 2021, the state chose to delay implementation of all aspects of the demonstration, including the expansion of Medicaid eligibility, the qualifying hours and activities requirement, and the premium requirement.

Adding three years to the demonstration approval period is an extension of the demonstration, and thus must comply with section 1115 demonstration transparency requirements under 42 CFR 431.412(c). Under the special terms and conditions (STCs) of this demonstration, the state’s request does not qualify as an “amendment,” but rather, is considered a request for an extension of the demonstration because it does not request to change the program elements referenced in STC 6. STC 6 enumerates the specific changes that would be amendments. Extending the demonstration period is not among the changes listed under STC 6 that can be made through an amendment, and, consistent with long-standing CMS practice, a change to a demonstration’s effective dates is considered an extension, which is addressed in the Pathways demonstration STC 8. Regardless, the state’s request to “amend and extend” the demonstration period did not meet the requirements of a complete amendment request as outlined in STC 7, which indicates that the state must include with its amendment request: an explanation of the public process used by the state, including a summary of any public feedback received and identification of how this feedback was addressed by the state; a description outlining the anticipated impact of the amendment on beneficiaries; a data analysis worksheet outlining the budget neutrality agreement and updates to existing demonstration reporting, quality, and evaluation plans. Even if CMS were to consider Georgia’s request as an amendment, the state did not include this required information. However, as stated above, consistent with long-standing practice, we consider the state’s request to add three years to the demonstration approval period an extension request rather than an amendment.

² Letter from CMS to Georgia on December 23, 2021: <https://www.medicaid.gov/sites/default/files/2021-12/ga-pathways-to-coverage-12-23-2021-ca.pdf>

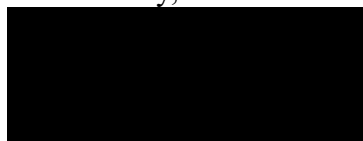
³ Letter from Georgia to CMS on June 24, 2021: <https://www.medicaid.gov/sites/default/files/2021-06/ga-cms-ltr-from-state-06252021.pdf>, Letter from Georgia to CMS on July 27, 2021: https://www.medicaid.gov/sites/default/files/2021-12/ga-dch-ltr-to-cms-07272021_0.pdf

Under STC 8 of the demonstration, if the state intends to request an extension of the demonstration, its application must comply with 42 CFR 431.412(c). As submitted, the February 24th and November 16th letters do not meet the minimum requirements for CMS to consider an extension request. Prior to submitting an extension request, the state must provide a 30-day state public notice and comment period as required by 42 CFR 431.412(c); see also 42 CFR 431.408(a).⁴ The state's submitted requests to extend the demonstration do not meet the requirements of 42 CFR 431.408(a) or 42 CFR 431.412(c). The state has plenty of time before the expiration of the currently approved demonstration authorities to meet the regulatory requirements to request an extension, if it intends to do so. Should the state choose to seek an extension of the Pathways demonstration, CMS will work with the state to meet these requirements and review the request in accordance with federal rules. Absent meeting these requirements, CMS is unable to consider the state's request for extension.

We agree with the state about the importance of comprehensively monitoring and evaluating the demonstration, in particular given the complex design and composition of policies in the Pathways demonstration. In light of the current demonstration period, we have been working with the state to develop a comprehensive Monitoring Protocol and an Evaluation Design to allow for as thorough an understanding as possible of the demonstration's implementation progress and its effects on beneficiary enrollment and coverage using as complete and up-to-date information as possible from the state's experience implementing the demonstration. CMS remains keenly interested in the opportunity for meaningful monitoring and evaluation to inform an understanding of the coverage received through the demonstration and early healthcare utilization patterns. As such, CMS and the state will collect meaningful data on these and other aspects of the demonstration and work toward finalizing the demonstration's Monitoring Protocol and Evaluation Design during the currently approved demonstration period. Therefore, CMS believes that the current implementation period, taking into consideration the timeframe required for submitting an extension request, should provide sufficient data to help understand the preliminary effects of the demonstration, considering the robust monitoring and evaluation efforts from our continuing collaboration.

Should you have any additional concerns or questions, please contact Ms. Jacey Cooper, Director, State Demonstrations Group, Center for Medicaid & CHIP Services, at Jacey.Cooper@cms.hhs.gov. Thank you again for your continued commitment to Georgia's Medicaid program.

Sincerely,

A large black rectangular redaction box covering the signature of Daniel Tsai.

Daniel Tsai
Deputy Administrator and Director

⁴ A request to extend an existing demonstration must demonstrate how the state met the public notice and comment period and include, e.g., a historical narrative summary of the demonstration, any changes being requested, financial data demonstrating the state's historical and projected expenditures for the requested period of the extension, and an evaluation report of the demonstration, inclusive of evaluation activities and findings to date.