

The end of Medicaid retroactive eligibility?

by Heidi M. Brown

You may have heard rumors about the end of Medicaid retroactive eligibility and coverage. Currently, according to the Medicaid Act, a Medicaid applicant can request and receive up to three months of retroactive eligibility from the date of the application.¹ For instance, if an applicant applies in April, he or she can request and receive Medicaid coverage for the months of January, February, and March, if the applicant would have met all the eligibility requirements during those previous months. Many applicants, Medicaid providers, and elder law attorneys rely on the protection afforded by retroactive eligibility because there can be barriers to applying for Medicaid. This protection might be eliminated.

By way of background, the 2018-19 Florida budget requested the Florida Agency for Health Care Administration (AHCA) to seek federal approval to “eliminat[e] the Medicaid retroactive eligibility period for non-pregnant adults.”² The Medicaid applicant would then be eligible the first day of the month of application.

In March 2018, AHCA prepared an amendment request to amend Florida’s 1115 MMA waiver to eliminate the three-month retroactive eligibility for applicants.³ According to the Florida budget and the waiver amendment application, the initial effective date would have been July 1, 2018, if approved by the U.S. Centers for Medicare and Medicaid Services (CMS). Although the amendment is titled MMA, or managed medical assistance, it would affect applicants for institutional care placement (ICP) and the long-term care waiver. It could also affect applicants who are already on Medicaid who are more than three months late in submitting their Medicaid annual review.

Per federal requirements, AHCA held two public meetings and a 30-day public comment period. On April 27,

2018, AHCA submitted the amendment request to CMS for approval. The federal comment period was from May 4, 2018, through June 5, 2018. As of this writing, CMS has not yet decided whether to eliminate the three-month retroactive eligibility.

Assuming CMS does approve the elimination of the three-month retroactive eligibility, there could be disastrous effects on the elderly and disabled adults.

For example, when elderly people need Medicaid assistance, oftentimes they need the assistance to pay for a skilled nursing home. Unfortunately, it may take more than 30 days to gather information about the applicant’s assets, income, and previous gifting/transfers to verify Medicaid eligibility. Sometimes it may take more than 30 days solely for a financial institution to review a power of attorney document and to comply with a request for information. If the Medicaid applicant is incompetent or the power of attorney document is insufficient for Medicaid planning, it may be necessary for someone to petition the court for a guardianship over the Medicaid applicant, which may take up to several weeks.

Another example of how eliminating retroactive eligibility can be detrimental to vulnerable adults is the previously healthy, capable, and uninsured person who is in a catastrophic accident. During this crisis, the applicant may not be physically or mentally able to compile the necessary information for a Medicaid application. Also, the applicant’s family and caregivers may be more concerned with the applicant’s care, and ultimately survival, rather than how to pay the medical providers or a long-term care facility.

In the above cases, the applicant may lose out on at least one month of retroactive coverage. Consequently, skilled nursing homes, which

typically cost between \$7,000 and \$15,000 per month, may require the applicant to pay the private pay rate until Medicaid approves the application. Another negative consequence might be that applicants and medical providers could file the Medicaid application before verifying all of the income, assets, and gifting/transfer history to try to ensure coverage for the month of admission to the skilled nursing home or hospital.

We are in a wait-and-see mode regarding whether CMS will approve the waiver amendment. We are hopeful that CMS will not approve it. Either way, the Elder Law Section and the *Advocate* will keep you informed of the ultimate outcome and will provide tips for possibly counteracting any deleterious effects.



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Endnotes

- ¹ See 42 U.S.C. 1396a(a)(34).
- ² H.B. 5001, 2018-9, Reg. Sess. (Fla. 2018).
- ³ See FL Agency for Health Care Administration, Managed Medical Assistance Waiver Amendment Request-Low Income Pool and Retroactivity Eligibility (June 12, 2018) available at http://www.fdhc.state.fl.us/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/mma_amend_waiver_LIP_2018-03.shtml.