

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 192

INTRODUCER: Senator Bean

SUBJECT: Medicaid Eligibility

DATE: March 26, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Williams</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>McKnight</u>	<u>Kidd</u>	<u>AHS</u>	<b>Recommend: Favorable</b>
3.	<u>McKnight</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 192 directs the Agency for Health Care Administration (AHCA) to seek authorization from the federal government to maintain Florida's current waiver authority that modifies the period of retroactive eligibility for certain Medicaid recipients. Pending federal approval, the current waiver authority allowing Florida's retroactive eligibility period for a non-pregnant adult to begin on the first day of the month in which the Medicaid recipient applies for Medicaid, would continue beyond its current expiration date of July 1, 2019. Otherwise, on that date, Florida's retroactive eligibility period will revert to 90 days, which is the norm under federal Medicaid regulations.

Consistent with the Terms and Conditions of the current Medicaid Managed Medical Assistance Program waiver, the bill also directs the AHCA to notify the federal government, before May 17, 2019, that this bill has been enacted by the Legislature during the 2019 Regular Session.

Florida's Medicaid program estimates that if the current waiver authority to limit retroactive eligibility is not extended, the Legislature will need to appropriate an additional \$103.6 million to the AHCA for State Fiscal Year 2019-2020 to restore the reduction taken in the 2018-2019 General Appropriations Act. Of this amount, \$40.1 million is general revenue, and \$63.5 million is federal funding.

The bill is effective upon becoming law.

**II. Present Situation:**

**The Medicaid Program**

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan approved by the federal Centers for

Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA, and financed with federal and state funds. Approximately 3.9 million Floridians are currently enrolled in Medicaid, and the program has estimated expenditures for the 2019-2020 state fiscal year of \$28.2 billion.<sup>1</sup>

Eligibility for Florida Medicaid is based on a number of factors, including age, household or individual income, and assets. State Medicaid payment guidelines are provided in s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments for Eligible Persons). Minimum coverage thresholds are established in federal law for certain population groups, such as children.

### **Medicaid Retroactive Eligibility**

The Social Security Act provides the requirements under which state Medicaid programs must operate. Federal law directs state Medicaid programs to cover, and provides federal matching funds for, medical bills up to three months prior to a recipient's application date.<sup>2</sup> The federal Medicaid statute requires that Medicaid coverage for most eligibility groups include retroactive coverage for a period of 90 days prior to the date of the application for medical assistance, however, this requirement can be waived pursuant to federal regulations.

An initial analysis by the AHCA indicated that approximately 39,000 non-pregnant adults were made retroactively eligible under the 90-day requirement of federal regulations in State Fiscal Year 2015-2016.<sup>3</sup> A more recent AHCA analysis corrects the erroneous counting of duplicate months of coverage for such recipients and indicates that 11,466 distinct individuals were granted such retroactive eligibility and utilized services during their retroactive period during State Fiscal Year 2017-2018.<sup>4</sup>

In compliance with the federal requirement for 90 days of retroactive eligibility, the Florida Medicaid State Plan previously provided that “[c]overage is available beginning the first day of the third month before the date of application if individuals who are aged, blind or disabled, or who are AFDC-related,<sup>5</sup> would have been eligible at any time during that month, had they

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<sup>1</sup> Social Services Estimating Conference, Medicaid Caseloads and Expenditures, November 18, 2018 and December 10, 2018--Executive Summary <http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf> (last visited March 6, 2019).

<sup>2</sup> 42 U.S.C. s. 1396a.

<sup>3</sup> See Agency for Health Care Administration, *Florida's 1115 Managed Medical Assistance (MMA) Prepaid Dental Health Program (PDHP), Low Income Pool (LIP), and Retroactive Eligibility Amendment Request* (March 28, 2018), Power Point presentation, available at: [http://ahca.myflorida.com/medicaid/Policy\\_and\\_Quality/Policy/federal\\_authorities/federal\\_waivers/docs/MMA\\_PDHP\\_LIP-Retro\\_Elig\\_amendment\\_presentation\\_032818.pdf](http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/MMA_PDHP_LIP-Retro_Elig_amendment_presentation_032818.pdf) (last visited March 6, 2019).

<sup>4</sup> Agency for Health Care Administration, *Senate Bill 192 Analysis* (February 27, 2019) (on file with Senate Committee on Health Policy).

<sup>5</sup> Aid to Families with Dependent Children (AFDC) was a federal assistance program in effect from 1935 to 1996 created by the Social Security Act and administered by the United States Department of Health and Human Services that provided financial assistance to children whose families had low or no income.

applied.” These provisions had been applicable to the Florida Medicaid State Plan since at least October 1, 1991.<sup>6</sup>

In 2018, the Florida Legislature, via the General Appropriations Act (GAA)<sup>7</sup> and the Implementing Bill accompanying the GAA<sup>8</sup>, approved a measure to direct the AHCA to seek a waiver from federal CMS to eliminate the 90-day retroactive eligibility period for non-pregnant adults aged 21 and older. For these adults, eligibility would become retroactively effective on the first day of the month in which their Medicaid application was filed, instead of the first day of the third month prior to the date of application.

Since this directive was enacted into law in the 2018 budget implementing bill, it is only applicable in the fiscal year for which it was enacted, State Fiscal Year 2018-2019, and does not have ongoing applicability beyond June 30, 2019.

### **Waiver Special Terms and Conditions**

As directed by the 2018 Legislature, the AHCA sought to amend the federal waiver for Florida’s section 1115 demonstration project, titled Managed Medical Assistance (MMA) Program (Project No. 11-W-00206/4). As a waiver amendment, there were comment periods at the state level prior to submission of the waiver request and at the federal level after submission of the waiver request. The waiver request that included the retroactive eligibility item was submitted to federal CMS by the AHCA on April 27, 2018, and was approved on November 30, 2018. The approval letter from federal CMS contained the following waiver authority:

[Effective February 1, 2019], to enable Florida to not provide medical assistance for any month prior to the month in which a beneficiary’s Medicaid application is filed, for adult beneficiaries who are not pregnant or within the 60-day period after the last day of the pregnancy, and are aged 21 and older. The waiver of retroactive eligibility does not apply to pregnant women (or during the 60-day period beginning on the last day of the pregnancy), infants under one year of age, or individuals under age 21. The state currently has state legislative authority for this waiver through June 30, 2019. The state must submit a letter to CMS by May 17, 2019, if it receives state legislative authority to continue the waiver past June 30, 2019. In the event the state does not receive legislative authority to continue this waiver through June 30, 2019 and timely submit a letter to CMS to this effect, this waiver authority ends June 30, 2019.<sup>9</sup>

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<sup>6</sup> See Florida Medicaid State Plan, page 373 of 431, *available at* [http://www.fdhc.state.fl.us/medicaid/stateplanpdf/Florida\\_Medicaid\\_State\\_Plan\\_Part\\_I.pdf](http://www.fdhc.state.fl.us/medicaid/stateplanpdf/Florida_Medicaid_State_Plan_Part_I.pdf) (last visited March 6, 2019).

<sup>7</sup> See Specific Appropriation 199 of the General Appropriations Act for Fiscal Year 2018-2019, Chapter 2018-9, Laws of Florida, *available at* <http://www.flsenate.gov/Session/Bill/2018/5001/Amendment/616813/pdf> (last visited March 6, 2019).

<sup>8</sup> See section 20 of the Implementing bill for Fiscal Year 2018-2019, Chapter 2018-10, Laws of Florida, *available at* <https://www.flsenate.gov/Session/Bill/2018/5003/BillText/er/PDF> (last visited March 6, 2019).

<sup>9</sup> See the November 30, 2018, CMS letter and waiver approval document, including waiver Special Terms and Conditions, *available at* <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-mma-ca.pdf> (last visited March 6, 2019).

An objective of the waiver authority is to encourage Medicaid recipients to obtain and maintain health coverage even when they are healthy, as opposed to applying for Medicaid only after they need and have obtained health care services. Obtaining and maintaining coverage in advance of illness should increase continuity of care and reduce gaps in coverage when recipients “churn” on and off of Medicaid enrollment by enrolling only when sick. Recipients should remain healthier on an ongoing basis and expenditures for treating acute illnesses should be mitigated if recipients obtain and maintain coverage in a more continuous fashion.<sup>10</sup>

Even though the federal waiver authority became effective only on February 1, 2019, the Legislature’s direction to the AHCA to seek the waiver took effect July 1, 2018. The AHCA reports that skilled nursing facilities and hospitals have resultantly taken steps to ensure that Medicaid applications for their residents or patients are submitted expeditiously.<sup>11</sup>

### **Medicaid Retroactive Eligibility in Other States**

At the time the Legislature considered the issue of changing Medicaid retroactive eligibility during the 2018 Regular Session, several states had already reduced retroactive eligibility periods so that retroactive eligibility begins on the first day of the month in which application is made. Iowa, New Hampshire, Arkansas, and Indiana made their changes in conjunction with Medicaid program expansion under the federal Patient Protection and Affordable Care Act (PPACA). Several other states had already modified retroactive eligibility prior to the enactment of the PPACA, including Delaware, Massachusetts, Maryland, Tennessee, and Utah.<sup>12</sup>

Based on a more recent analysis, Florida is one of eight states that has eliminated or is proposing to eliminate or place limits on retroactive eligibility for one or more eligibility groups in 2018 or 2019. The states in addition to Florida are Arkansas, New Hampshire, Iowa, Kentucky, Maine, New Mexico, and Utah.<sup>13</sup>

### **III. Effect of Proposed Changes:**

**Section 1** directs the AHCA to seek approval from the CMS to maintain Florida’s current waiver authority that modifies the period of retroactive eligibility for certain Medicaid recipients. Under the bill, pending federal approval, the current waiver authority allowing Florida’s retroactive eligibility period for a non-pregnant adult to begin on the first day of the month in which the

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<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 4.

<sup>12</sup> Musumeci, MaryBeth, and Rudowitz, Robin, *Medicaid Retroactive Coverage Waivers; Implications for Beneficiaries, providers, and States*, Kaiser Family Foundation, available at <https://www.kff.org/medicaid/issue-brief/medicaid-retroactive-coverage-waivers-implications-for-beneficiaries-providers-and-states/> (last visited March 6, 2019).

<sup>13</sup> Gifford, Kathleen, et al., *States Focus on Quality and Outcomes Amid Waiver Changes, Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2018 and 2019*, October 25, 2018, available at <https://www.kff.org/medicaid/report/states-focus-on-quality-and-outcomes-amid-waiver-changes-results-from-a-50-state-medicaid-budget-survey-for-state-fiscal-years-2018-and-2019/> (last visited March 6, 2019).

Medicaid recipient applies for Medicaid, would continue beyond its current expiration date of July 1, 2019.

**Section 2** directs the AHCA to notify the CMS, before May 17, 2019, that the bill has been enacted during the 2019 Regular Session of the Legislature, consistent with the Special Terms and Conditions of the current Managed Medical Assistance waiver program.

**Section 3** provides for the bill to be effective upon becoming law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Pending federal approval under SB 192, the retroactive eligibility waiver authority that has been in effect since February 1, 2019, will remain in effect beyond the current state fiscal year, meaning that Medicaid providers who provide services to newly-eligible, non-pregnant Medicaid recipients aged 21 or older, earlier than the first day of the month

in which the recipient applies for Medicaid, will continue to receive no Medicaid reimbursement for those services.

**C. Government Sector Impact:**

For the 2018-2019 state fiscal year, the AHCA originally estimated that, by reducing the period of retroactive Medicaid eligibility for non-pregnant adults from a period of 90 days prior to application to the first day of the month of application, the Medicaid program would avoid the payment of claims totaling \$98.4 million. That sum represented \$37.5 million from the General Revenue Fund and \$60.9 million from federal funds. This was the amount originally calculated by the AHCA as part of the development of its schedule VIII-B reduction proposals that accompanied the Governor's Budget Recommendations for State Fiscal Year 2018-2019.<sup>14</sup>

The AHCA has provided a more recent fiscal impact estimate. If the waiver authority for retroactive eligibility granted by federal CMS on November 30, 2018, is not continued for the 2019-2020 state fiscal year, the AHCA estimates that the Legislature will need to appropriate an additional \$103.6 million to the AHCA in order to restore the reduction made during the 2018 Regular Session. Of this total, \$40.1 million is General Revenue and \$63.5 million is federal funding.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates two undesignated sections of Florida law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>14</sup> See AHCA's Schedule VIII-B reduction proposals for Fiscal Year 2018-2019, available on the Florida Fiscal Portal at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=18102&DocType=PDF> (last visited February 4, 2019).

<sup>15</sup> *Supra* note 4.