

**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 Health Policy

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BILL: SB 52

INTRODUCER: Senator Bean

SUBJECT: Medicaid Services

DATE: January 17, 2020

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

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|    | ANALYST         | STAFF DIRECTOR | REFERENCE  | ACTION             |
|----|-----------------|----------------|------------|--------------------|
| 1. | <u>Williams</u> | <u>Brown</u>   | <u>HP</u>  | <u>Pre-meeting</u> |
| 2. | _____           | _____          | <u>AHS</u> | _____              |
| 3. | _____           | _____          | <u>AP</u>  | _____              |

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**I. Summary:**

SB 52 amends s. 409.904, F.S., to delete a current-law provision that will cause subsection (12) of that statute to expire on July 1, 2020. By deleting the expiration date, the bill maintains Florida's current policy to limit a non-pregnant adult's retroactive eligibility for the Medicaid program to the first day of the month in which such an adult submits an application to be enrolled in the program.

A fiscal impact estimate for this bill has not been provided by the Agency for Health Care Administration (AHCA). See Section V for historical cost estimates.

The effective date of the bill is July 1, 2020.

**II. Present Situation:**

**Florida 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, service coverage policies, and reimbursement methodologies.

Florida's Medicaid program is administered by the AHCA and financed with federal and state funds. According to the most recently published estimates, just under 3.9 million Floridians are currently enrolled in Medicaid, and the program's projected expenditures for the 2020-2021 state fiscal year are \$29.0 billion.<sup>1</sup>

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<sup>1</sup> See Social Services Estimating Conference, Medicaid Caseloads and Expenditures, July 25, 2019, and August 6, 2019, respectively, Executive Summary, available at <http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf> (last visited Jan. 16, 2020). Estimates made in December 2019 and January 2020 are not yet published, as of this writing.

Eligibility for Florida Medicaid is based on several 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 or pregnant women.

## **Medicaid Retroactive Eligibility**

### ***Federal Requirements***

The Social Security Act provides requirements under which state Medicaid programs must operate. For most eligibility groups, federal law<sup>2</sup> directs state Medicaid programs to make payment for Medicaid-covered services furnished in or after the third month before the month in which a Medicaid-eligible individual submits an application to enroll in the program, if such individual would have been determined Medicaid-eligible at the time such services were furnished.<sup>3</sup> However, the requirement for retroactive eligibility may be waived pursuant to federal waiver laws and regulations.

### ***Florida's State Plan for Medicaid***

In compliance with the federal requirement for 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>4</sup> would have been eligible at any time during that month, had they applied.” These provisions had been applicable to the Florida Medicaid State Plan as state policy since at least October 1, 1991, until the 2018-2019 state fiscal year.<sup>5</sup>

### ***Florida's 2018 Policy Change***

In 2018, the Legislature, via the General Appropriations Act (GAA)<sup>6</sup> and the Implementing Bill accompanying the GAA,<sup>7</sup> directed the AHCA to seek a waiver from federal CMS to limit the 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, if federal waiver authority to that effect were granted.

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<sup>2</sup> 42 U.S.C. s. 1396a(a)(34).

<sup>3</sup> Under this latter aspect of retroactive eligibility, a newly-eligible Medicaid recipient must be deemed to have been eligible during the retroactive period in order for Medicaid to make payment for covered services provided during that period. A lack of eligibility during the retroactive period would result in no payments being made by Medicaid for such expenses, regardless of prospective eligibility.

<sup>4</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.

<sup>5</sup> See Florida Medicaid State Plan, page 373 of 431, *available at* [https://ahca.myflorida.com/medicaid/stateplanpdf/Florida\\_Medicaid\\_State\\_Plan\\_Part\\_I.pdf](https://ahca.myflorida.com/medicaid/stateplanpdf/Florida_Medicaid_State_Plan_Part_I.pdf) (last visited Dec. 11, 2019).

<sup>6</sup> See Specific Appropriation 199 of the General Appropriations Act for State Fiscal Year 2018-2019, Chapter 2018-9, Laws of Fla., *available at* <http://www.flsenate.gov/Session/Bill/2018/5001/Amendment/616813/pdf> (last visited Dec. 10, 2019).

<sup>7</sup> See section 20 of the Implementing Bill for State Fiscal Year 2018-2019, Chapter 2018-10, Laws of Fla., *available at* <https://www.flsenate.gov/Session/Bill/2018/5003/BillText/er/PDF> (last visited Dec. 10, 2019).

As directed by the 2018 Legislature, the AHCA requested an amendment to 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>8</sup>

This change in the state's retroactive eligibility policy was implemented in February 2019 but was limited in duration under both federal authority and state law. In terms of state law, since the change was enacted via the 2018 budget Implementing Bill, it was applicable only in the fiscal year for which it was enacted (State Fiscal Year 2018-2019) and did not have ongoing applicability beyond June 30, 2019.

### ***Continuation of Florida's Policy in 2019***

The 2019 Legislature renewed the 2018 Medicaid retroactive eligibility policy by enacting statutory language in the 2019-2020 budget Implementing Bill, or SB 2502,<sup>9</sup> which created s. 409.904(12), F.S., and required the AHCA, effective July 1, 2019, to make payments to Medicaid providers for Medicaid-covered services as follows:

- On behalf of eligible children and pregnant women, retroactive for a period of no more than 90 days before the month in which an application for Medicaid is submitted; or
- On behalf of eligible non-pregnant adults, retroactive to the first day of the month in which an application for Medicaid is submitted.

SB 2502 was passed by both chambers of the Florida Legislature on May 4, 2019. The AHCA notified federal CMS of the bill's passage prior to the May 17, 2019, deadline imposed under the

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<sup>8</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 Dec. 10, 2019).

<sup>9</sup> See s. 24 of ch. 2019-116, Laws of Fla., or the enacted version of SB 2502, available at <http://www.flsenate.gov/Session/Bill/2019/2502/BillText/er/PDF> (last visited Jan. 15, 2020).

waiver authority granted in November 2018, thereby enabling the waiver authority to continue for the current state fiscal year.

However, s. 409.904(12), F.S., will expire under current law on July 1, 2020, consistent with the expiration of other statutory provisions in the Implementing Bill. The AHCA needs both federal waiver authority, which is currently granted, and a continuation of authority under state law to continue the state's current retroactive eligibility policy beyond June 30, 2020.

### ***Reports and Evaluations***

In addition to enacting the statutory language in s. 409.904(12), F.S., the 2019 Implementing Bill also directed the AHCA to compile and submit specified information relating to retroactive eligibility in a report to the Governor and the Legislature by January 10, 2020.<sup>10, 11</sup> In the report, the AHCA indicated the following:

- Federal CMS is working with states to standardize evaluation methodologies for waivers of retroactive eligibility so that it can better assess the impacts of changes to Medicaid retroactive eligibility policy. To this end, CMS provided detailed evaluation design guidance to be used as a basis for discussions with the evaluators.<sup>12</sup>
- The AHCA used this guidance in its proposed evaluation design, which was submitted to CMS on July 24, 2019. The proposed evaluation design was included as an Appendix to the report submitted by the AHCA on January 10, 2020. The proposed evaluation design includes six specific research questions, three of which are key review questions, and three of which may be included contingent on results for one of the key questions. For each research question, the research design addresses outcome measures, sample populations, data sources, and analytic methods.
- The AHCA is awaiting CMS feedback on the draft evaluation design and must submit a revised draft within 60 days after receipt of any additional edits from CMS. Upon CMS approval of the draft Evaluation Design, the document will be included as an attachment to the Florida MMA 1115 waiver Special Terms and Conditions. The AHCA will publish the approved Evaluation Design within 30 days of CMS approval.
- The AHCA has contracted with the University of Florida to evaluate the Florida Medicaid 1115 waiver, including a segment on the change to retroactive eligibility policy. The evaluation of retroactive eligibility policy is anticipated to be completed in the Fall of 2020.

### ***Policy Objectives***

An objective of Florida's current retroactive eligibility policy 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

<sup>10</sup> See s. 25 of ch. 2019-116, Laws of Fla., or the enacted version of SB 2502, available at <http://www.flsenate.gov/Session/Bill/2019/2502/BillText/er/PDF> (last visited Jan. 15, 2020).

<sup>11</sup> The January 10, 2020, report, "Florida Medicaid Retroactive Eligibility Legislative Report," was submitted by the AHCA on January 10, 2020 (on file with the Senate Committee on Health Policy).

<sup>12</sup> See *Appendix to Evaluation Design Guidance for Section 1115 Eligibility and Coverage Demonstrations: Retroactive Eligibility Waivers*, an undated 2019 release available at <https://www.medicaid.gov/medicaid/section-1115-demo/downloads/evaluation-reports/ce-evaluation-design-guidance-retro-eligibility-appendix.pdf> (last visited Dec. 11, 2019).

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>13</sup>

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

When the Legislature considered changing Medicaid retroactive eligibility in 2018, 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 such 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>14</sup>

During the Florida Legislature's 2019 Regular Session, Florida was one of a total of eight states that had eliminated or was 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 were Arkansas, New Hampshire, Iowa, Kentucky, Maine, New Mexico, and Utah.<sup>15</sup>

More recently, a few states other than Florida have obtained waivers to eliminate or reduce retroactive coverage. Effective July 1, 2019, Arizona eliminated retroactive coverage for most newly-eligible Medicaid recipients, excluding pregnant women and children. Although Maine received waiver approval (in December 2018) to eliminate retroactive eligibility, in January 2019, the incoming governor informed federal CMS that the state would not accept the terms of the approved waiver. Similarly, in New Mexico, a Section 1115 waiver amendment was approved in December 2018 that allowed the state to limit retroactive coverage to one month for most Medicaid managed care members; however, under the new governor, the state submitted an amendment in June 2019 to reinstate the full 90-day retroactive coverage period. Finally, as a result of litigation challenging Section 1115 waivers, retroactive coverage restrictions have been set aside in Arkansas, Kentucky, and New Hampshire.<sup>16</sup>

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

**Section 1** deletes the statutory expiration date of July 1, 2020, from s. 409.904(12), F.S., which was enacted in 2019 to limit retroactive Medicaid eligibility for non-pregnant adults to the first day of the month in which they apply for Medicaid.

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<sup>13</sup> *Supra*, note 8.

<sup>14</sup> Musumeci, MaryBeth, and Rudowitz, Robin, *Medicaid Retroactive Coverage Waivers; Implications for Beneficiaries, Providers, and States*, November 2017, Kaiser Family Foundation, available at <https://www.kff.org/medicaid/issue-brief/medicaid-retroactive-coverage-waivers-implications-for-beneficiaries-providers-and-states/> (last visited Jan. 16, 2020).

<sup>15</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 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 Jan. 16, 2020).

<sup>16</sup> Gifford, Kathleen, et al., *A View from the States: Key Medicaid Policy Changes Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2019 and 2020* (October 2018), available at <https://www.kff.org/medicaid/report/a-view-from-the-states-key-medicaid-policy-changes-results-from-a-50-state-medicaid-budget-survey-for-state-fiscal-years-2019-and-2020/> (last visited Jan. 16, 2020).

**Section 2** provides for an effective date of July 1, 2020.

**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:

Under SB 52, the retroactive eligibility policy 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 covered 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:

If the waiver authority for retroactive eligibility granted by federal CMS on November 30, 2018, and implemented on February 1, 2019, had not been continued for the current state fiscal year, the AHCA estimated in 2019 that the Legislature would have needed to appropriate an additional \$103.6 million in order to restore the reduction made

during the 2018 Regular Session. Of this total, \$40.1 million would have been general revenue and \$63.5 million would have been federal funding.<sup>17</sup>

As part of its analysis of this bill, the AHCA provided the following fiscal impact statement:

SB 52 allows the State to continue the savings gained when the [current retroactive eligibility] policy was initially enacted. If the current retroactive policy expires July 1, 2020, Medicaid will revert to the prior policy of allowing all applicants with unreimbursed medical expenses to have up to 90 days of retroactive eligibility. This would have a fiscal impact to Medicaid.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 409.904 of the Florida Statutes.

**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>17</sup> Agency for Health Care Administration, *Senate Bill 192 Analysis* (February 27, 2019) (on file with the Senate Committee on Health Policy).

<sup>18</sup> Agency for Health Care Administration, *Senate Bill 52 Analysis* (January 7, 2020) (on file with the Senate Committee on Health Policy).