



**Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St.,
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June 29, 2026

Planning and Policy Unit
Division of Medicaid and Medical Assistance
1901 North DuPont Highway/P O Box 906
New Castle, DE 19720-0906

RE: 29 DE Reg. 978, 980 and 984 DHSS/DMMA Medicaid Retroactive Eligibility Regulations (June 1, 2026)

To Whom It May Concern:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposal to amend the Administrative Code regarding retroactive eligibility for certain Medicaid groups. The GACEC **objects** to the implementation of this very significant policy change, without the addition of language that requires contractors of DMMA to provide provisional plans for services while individualized plans are developed. This will help protect beneficiaries from medical debt, will accelerate the provision of needed services, and also protect service providers from risk of uncompensated care.

In general, individuals who apply for Medicaid are eligible for retroactive coverage. CMS rules allow individuals who apply for nursing home services to have retroactive coverage. For many years DMMA excluded retroactive coverage in its Section 1115 waiver. In 2024, DMMA revised its Section 1115 Waiver to allow itself to provide retroactive coverage for Section 1115 applicants. This included Home and Community Based Services (HCBS), Assisted living, HIV Waiver, Acquired Brain Injury (ABI), Qualified Medicare Beneficiary (QMB), Program of All-Inclusive Care for the Elderly (PACE) and the Chronic Renal Program. However, DMMA has subsequently reconsidered and decided that federal Medicaid guidance does not support providing retroactive eligibility for these groups.

Proposed Amendments

Proposed revisions to 16 Del Admin. Code 14920.1, starting on Page 978 of the Register of Regulations, states that its scope is to clarify that assisted living applicants are not eligible for retroactive benefits and can no longer be processed like nursing home applications. However, the draft amendment, which appears to take place with immediate effect, appears to restore the restrictions on retroactive eligibility as follows:

Individuals in the following programs are not permitted to receive Retroactive Medicaid coverage

- a. Long Term Care Community Services (LTCCS) (See Section 20370 LTC Retroactive Eligibility):*
 - i. Home and Community Based Services (HCBS) for the Elderly and Disabled*
 - ii. Assisted Living*
 - iii. HCBS for individuals with AIDS/HIV*
 - iv. Individuals with Acquired Brain Injury*
- b. The following Medicare Savings Program*
 - i. Qualified Medicare Beneficiary*
- c. Program of All Inclusive Care for the Elderly (PACE)*
- d. The Chronic Renal Disease Program (CRDP)*

Council would like to request clarification regarding the actual scope of the amendment. Please note the following proposed changes:

- 20370, in conjunction with 14920.1, which eliminates retroactive coverage for individuals who are applying for assisted living through the long-term care program. Applicants for AL cannot receive Medicaid-funded AL until they have completed and signed a Person-Centered Service Plan.
- 20700.1.1 Lifespan Waiver Retroactive Eligibility Retroactive eligibility may be approved for individuals applying for the Developmental Disabilities Lifespan Waiver. Coverage may be provided prospectively while Medicaid eligibility is being determined. The individual assessment and Person-Centered Service Plan (PCSP) are completed by the Division of Developmental Disabilities Services (DDDS).
- 20710.1 Clarifying that applicants for Long Term Care Community Services (LTCCS) cannot get retroactive eligibility. If an LTCCS applicant requests retroactive eligibility in the month(s) prior to the month of application due to unpaid medical bills, the individual must be evaluated for eligibility under an alternative pathway for the retroactive period. Coverage under LTCCS may begin only after all federal Home and Community Based Services (HCBS) requirements are met, including completion of the required assessment and finalization of a Person-Centered Service Plan (PCSP) with the individual's informed written consent.
- 25100.2 CCADP Retroactive Eligibility. Individuals applying for Children's Community Alternative Disability Program (CCADP) may be found eligible for retroactive eligibility as described at DSSM 14920-14920.6.

Council notes that CMS could issue amended regulations clarifying that the retroactive coverage is available provided that a signed service plan is developed after a person's application has been approved and the services were included in the plan.

DMMA could also revise its rules to require that a provisional service plan be immediately developed for new beneficiaries so that they are not exposed to extensive financial liability for services during any wait for a comprehensive evaluation and development of a plan. You will note that this is already allowed for DDDS service recipients (see 20700.1.1 above and page 150 of DDDS waiver.).

Factually, many individuals can be approved for a Medicaid waiver program within a relatively short period of time but then have an indeterminate wait to obtain an evaluation for services and service plan. If Managed Care Organizations (MCOs) are obligated to develop a provisional

plan, potential exposure for eligible individuals may be minimized. This does not assist with paying for services for individuals who are awaiting approval of their applications or have incurred expenses prior to their application, but it may help expedite service delivery and payment. Individuals should make sure that they have been evaluated for other Medicaid programs that do provide retroactive coverage.

Thank you for your time and consideration of our objection and recommendations. We look forward to receiving information on our request for clarification. Please feel free to contact Pam Weir or me should you have any questions on our comments or our request. Thank you again for this opportunity.

Sincerely,

William H. Doolittle

William H. Doolittle
Chairperson

WHD: kpc