

ELDER LAW

Connecticut Governor Withdraws Medicaid Waiver Request

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In a dramatic development with significant implications in New York, Connecticut has withdrawn its controversial application for an administrative waiver of federal Medicaid eligibility law. In a press release dated May 6, 2005, Governor M. Jodi Rell of Connecticut cancelled a request that had been languishing in Washington for the last three years.

Connecticut made the original request on April 26, 2002. The request was made to the Centers for Medicare and Medicaid Services (CMS), a division of the United States Department of Health and Human Services. Connecticut sought authority to impose Medicaid eligibility rules that would have been more restrictive than the federal Medicaid statute itself. Specifically, the waiver request sought to extend the look-back period for transfers of real estate from 36 months to 60 months and to delay the date upon which the penalty-period would begin to run. The request based its authority under §1115 of the Social Security Act. For a complete background on this issue, see this column from March 12, 2003 entitled "Connecticut 1115 Medicaid Waiver Proposal".

In the ensuing three years, the request had neither been approved nor disapproved. During this period, CMS had sent six questions to Connecticut seeking to clarify certain aspects of the waiver request. CMS asked about negative comments from elder law attorneys and the Connecticut General Assembly, for more detail on the real property that would be subject to the extended look-back period, protection for vulnerable populations and whether there would be any new costs associated with the new thresholds. Connecticut submitted a response.

Implications for New York

The Connecticut action has a direct relationship to New York State policy. In his proposed budgets for 2004 and 2005, New York Governor George E. Pataki unsuccessfully sought legislative authority to request restrictive Medicaid waivers similar to the one Governor Rell has just withdrawn. Governor Pataki sought to increase the look-back period for all transfers (not just real estate transactions) from 36 months to 60 months. He also sought to delay the running of the penalty-period. The proposed waiver would have started the penalty-period at a later time and would have made the date of Medicaid eligibility much later in time.

Governor Rell based her decision upon four factors. First, she raised a concern about the potential harm to the seniors forced to deal with the practical difficulties of complying with the increased paperwork. This is recognition of the extraordinary burden of requiring a Medicaid applicant to produce five years of complete records and explanations of all deposits and withdrawals. The paperwork burden could keep seniors who had made no objectionable transfers from applying. "As frail elderly and disabled citizens attempt to navigate the complexity of the healthcare system, measures in the waiver application to change the process could be perceived as hindering the ability of individuals to access appropriate nursing home care."

Second, she acknowledged the potential financial harm to nursing homes whose residents might have no funds and still not be able to qualify under the proposed rules. Nursing home residents caught in this trap might be unable to qualify for Medicaid and at the same time the nursing home might have to provide them needed medical care without reimbursement from Medicaid.

Third, she drew attention to the fact that CMS had not approved the application after three years. "The fact that the Centers for Medicare and Medicaid Services did not expeditiously approve the state's 2002 request is further indication that the waiver application may be viewed as problematic".

Fourth, she stated that she thought this should be a matter of federal policy and not simply the public policy of one state. She mentioned the possibility that the federal government may take action on these issues. This is a possible reference to the recently established Medicaid advisory panel.

Conclusion

Opponents of the New York proposal had pointed to the inaction of the federal government on the Connecticut proposal as a caution that New York should not expect budgetary savings in the short term. This caution is timelier now. It had been expected that Connecticut's proposal, being the earliest filed, would be a bellwether, giving a strong indication of how New York's request would have been received. This action by Governor Rell leaves pending waiver requests from Minnesota (filed March 25, 2003) and Massachusetts (filed April 10, 2003).