Page 60: Financing: Advance and Retainer Payments

What are the parameters for retainer payments authorized under section 1915(c) Home and Community-Based Services (HCBS) waivers, which may be used to maintain funding for providers not able to operate during the COVID-19 pandemic?

Retainer payments allow a provider to continue to bill for individuals who are enrolled in a program or who are receiving a HCBS service as specified in his/her person-centered service plan when circumstances prevent the individual from receiving the service. Therefore, retainer payment amounts are tied to amounts reflective of the services that would have been provided to enrolled members should the pandemic not have occurred. Self-quarantining activities during the COVID-19 pandemic, which may lead to the temporary closure of a program, are circumstances that may prevent individuals from receiving their HCBS services.

Retainer payments have been used historically under the section 1915(c) HCBS waivers since 2000. A July 2000 State Medicaid Director's letter, available at:

https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf

This document announced specific parameters for the retainer payments, including that:

• Retainer payments are limited to providers of personal assistant services, and

• The length of time retainer payments could be used is the "lesser of 30 consecutive days or the number of days for which the state authorizes a payment for 'bed-hold' in nursing facilities.

The 2000 guidance did not place any restrictions on the number of time-limited periods (episodes) of retainer payments that could be authorized for a beneficiary. While retainer payments up to 30 days may be implemented within a section 1915(c) waiver application itself, consistent with prior disasters, states may authorize up to three 30-day episodes of retainer payments for an individual during the period of the disaster using the Appendix K. For all retainer payments, states will need to describe the methodology for determining the length of time retainer payments will be made available, and any limits on the number of episodes a state will fund (including specifying whether there will be a break in billing between episodes). CMS notes that the state can set the rate for retainer payments at a percentage below the full rate for the service.

CMS also notes that the references in the 2000 guidance to retainer payments being available for personal care services may also be viewed to incorporate the breadth of HCBS in which support for activities of daily living or instrumental activities of daily living occur. This would typically encompass most residential habilitation programs as well as many non-residential day programs providing services (because personal care is a component of the service).
CMS also clarifies that consecutive days are those days that are eligible for billing. As typical day habilitation services are rendered Monday through Friday, 30 consecutive billing days would encompass a 6-week period.

Full FAQ at: https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf

NEW FAQs – Released June 30, 20201COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies Last Updated June 30, 2020

What controls should states set on retainer payments authorized under section 1915(c) Home and Community-Based Services waivers?

States interested in utilizing retainer payments for multiple (up to three) episodes of up to 30 days per beneficiary will be expected to include or add the following guardrails in their Appendix K submissions:

• Limit retainer payments to a reasonable amount and ensure their recoupment if other resources, once available, are used for the same purpose. In terms of setting a reasonable amount, a retainer payment cannot exceed the payment for the relevant service; the state may specify that a retainer payment will be made at a percentage of the current rate, or a state may specify retainer payments will not be made to a setting until attendance is below an identified percentage of the enrollment (e.g., 75 percent).

• Collect an attestation from the provider acknowledging that retainer payments will be subject to recoupment if inappropriate billing or duplicate payments for services occurred (or in periods of disaster, duplicate uses of available funding streams), as identified in a state or federal audit or any other authorized third-party review. Note that "duplicate uses of available funding streams" means using more than one funding stream for the same purpose.

• Require an attestation from the provider that it will not lay off staff, and will maintain wages at existing levels.

• Require an attestation from the provider that they had not received funding from any other sources, including but not limited to unemployment benefits and Small Business Administration loans, that would exceed their revenue for the last full quarter prior to the PHE, or that the retainer payments at the level provided by the state would not result in their revenue exceeding that of the quarter prior to the PHE.

- If a provider had not already received revenues in excess of the pre-PHE level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-PHE level, any retainer payment amounts in excess would be recouped.
- If a provider had already received revenues in excess of the pre-PHE level, retainer payments are not available.

Full FAQ at: https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf