



April 6, 2020

Mr. Calder Lynch
Deputy Administrator and Director, Center for Medicaid and CHIP Services
Centers for Medicare and Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244

Mr. Russell Vought
Acting Director
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

Dear Calder and Russ:

On behalf of the nation's Medicaid Directors, thank you for how responsive CMS has been to states throughout the COVID-19 pandemic. The level of partnership is truly unprecedented. It is in this spirit of partnership that we bring an urgent request to your attention: **we urge CMS and OMB to allow states to make retainer payments to essential Medicaid providers through Section 1115 waivers during this emergency.**

Medicaid Directors are confronting an unprecedented crisis. Many of the providers who serve our 72 million members are at risk of closing their doors in a matter of days or weeks due to extraordinary costs (e.g. staffing, PPE) and loss of typical visit volume. While new small business loans in the CARES Act may eventually help, they will not reach providers quickly enough. Financial institutions processing these loans are overwhelmed, and it may take months for dollars to flow. It is also unclear when – and even if – the \$100 billion in provider financial assistance, also from the CARES Act, will reach small, essential Medicaid providers.

Medicaid programs have the infrastructure in place today to avert this crisis and have successfully employed this strategy with select providers during other disaster events. If we wait, core components of the Medicaid delivery system could fail during, or soon after, this pandemic. We urge CMS to use its broad authority to permit Section 1115 waivers for retainer payments (under costs not otherwise matchable) during this national emergency.

As part of this, Medicaid Directors support the need for reasonable and appropriate guardrails around these retainer payments. Guardrails will ensure that Medicaid does not shoulder this crisis for the entire health care system, which is not our goal. In addition, these guardrails can ensure states are being fiscally responsible.

Guardrails could include:

- Allowing retainer payments only for providers for which Medicaid is a predominant payer and has a unique role. Examples include: behavioral health providers (especially substance use disorder treatment providers), long-term care providers, and others.
- Stipulating that payments are subject to future state audit(s).
- Collecting an attestation from the provider acknowledging that retainer payments may be subject to recoupment if a state audit determines that inappropriate billing or duplicate payments for services occurred.
- Requiring an attestation from the provider that it will not lay off staff, and will maintain staff salary and wages at existing levels.
- Limiting retainer payments to a reasonable amount and minimizing duplication with other resources once they become available. For example, one strategy could be to limit total dollars for a retainer payment to a baseline set from the period prior to the COVID crisis and/or limit payment to only those services authorized in the member's service plan that would have been provided if COVID restrictions were not in place.

Medicaid Directors stand ready to work with CMS and OMB on these and other appropriate guardrails on the use of retainer payments through Section 1115 authority.

If you have any questions or would like to discuss this issue further, please contact Matt Salo at matt.salo@medicaiddirectors.org.

Sincerely,



Beth Kidder
President, NAMD
Deputy Secretary for Medicaid
Florida Agency for Health Care Administration



Jami Snyder
President-elect, NAMD
Director
Arizona Health Care Cost Containment System

Cc: Greg D'Angelo, Associate Director for Health Programs, The Office of Management and Budget