

August 18, 2020

The Honorable Charles Schumer
Senate Minority Leader
Washington, D.C. 20510

Dear Minority Leader Schumer,

As the leading health care providers and advocacy organizations supporting individuals with disabilities in New York, we are reaching out to urge you, during final negotiations on the upcoming COVID-19 relief package, to include a legislative fix to address an issue that is causing significant concern and confusion for the disability community.

On June 30, 2020, the U.S. Centers for Medicaid CMS published a Frequently Asked Questions (FAQ) guidance that would retroactively restrict the length of the state's authority to issue "retainer" payments to a maximum of 90 days. Throughout this public health crisis, disability service providers – in New York and across the country – have been working tirelessly to keep the people they support safe and healthy in the face of staffing shortages, program closures, and quarantine mandates.

Access to stable funding via the retainer payment provision outlined in Medicaid regulation has been crucial to helping providers successfully navigate this pandemic and be available to serve their populations once the crisis is over. These payments are essential to keeping people with disabilities safe and healthy, maintaining provider solvency, and ensuring staff members continue to receive salaries. Due to the scope of this crisis, many states, including New York, requested and received the authority to extend this emergency provision.

New York State's approved 1135 Waiver (Appendix K) states that "[r]etainer payments cannot be provided for more than 30 consecutive days", and that, "[t]here may be more than one 30 consecutive day period." Throughout May 2020, the New York State Department of Health held several webinars where they indicated retainer payments would be paid through at least the end of 2020, if not longer, due to the ongoing COVID-19 health crisis.

Unfortunately, the June 30 announcement by CMS restricting retainer payments came as an after-the-fact surprise to both the New York Department of Health and the disability provider and advocacy communities. In stating this position, CMS cited retainer payment policy that was developed 20 years ago, and which controls payment policy when individuals are temporarily unable to access services; the rationale for these time limits were varied, but none contemplated an historic public health emergency. This policy may have worked well in the normal course of business, but clearly that is not the case right now – a fact that the U.S. Department of Health and Human Services acknowledged when it extended the national Public Health Emergency mere weeks after putting out the FAQ guidance on retainers.

It is urgent that Congress include a fix for this issue in the upcoming COVID-19 relief package. At this time, the allowable renewal periods have been exhausted and providers are facing a dramatic impact on funding available to cover fixed costs, hazard or enhanced pay for staff, and atypical pandemic related expenses. Given CMS' stance, many are contemplating bringing their participants, a very vulnerable

population, into situations that are inherently riskier (programs in enclosed spaces) than staying at home. Please act quickly to reverse the financial pressures that are impelling providers to make these perilous decisions.

Thank you for your consideration of this matter.

Sincerely,

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