



August 19, 2020

VIA ELECTRONIC MAIL

Eric Friedlander  
Secretary  
Cabinet for Health and Family Services  
275 E. Main Street, 5W-A  
Frankfort, Kentucky 40621

Lisa Lee, Commissioner  
Department for Medicaid Services  
Cabinet for Health and Family Services  
275 E. Main Street, 6W-A  
Frankfort, Kentucky 40621

**Re: Retainer Payments for Certain 1915c Waiver Services**

Secretary Friedlander and Commissioner Lee,

On behalf of the Kentucky Association of Private Providers (KAPP) I would like to thank you for your leadership and commitment to engaging stakeholders during this unprecedented time. As you may know, KAPP is a trade association representing over 100 providers of support services to individuals with intellectual and developmental disabilities (I/DD) through the Supports for Community Living (SCL) and Michelle P. waivers. I am writing today to make you aware of the devastating impact COVID-19 has had on providers of Adult Day Training (ADT) and Adult Day Health Care (ADHC) services and the individuals with I/DD who rely on these vitally important services.

In order to achieve our shared mission of caring for Kentucky's most vulnerable citizens, during this pandemic we will need to continue to think creatively and work collaboratively. KAPP would like to work with CHFS to establish a cost effective system to issue retainer payments for 1915c waiver ADT and ADHC services.

**Background**

To limit the spread of COVID-19, on March, 20, 2020, Governor Andy Beshear ordered the temporary closure of ADHCs and ADTs. On Friday, March 27, 2020, 1915c waiver providers received a memorandum from Pam Smith, Director of the Division of Community Alternatives, recognizing that, "ADHCs and ADTs are experiencing decreases in revenue due to the COVID-19 state of emergency." On March 30, 2020 KAPP and the Kentucky Association of Adult Day Centers submitted a joint letter to Secretary Friedlander requesting that CHFS issue retainer payments for 1915c ADT and ADHC services based upon 80% of the approved units in the person centered plan of care.

Retainer payments have been used by states for 1915c waiver services since 2000. In a letter to state Medicaid Directors dated July 25, 2000, CMS outlined that 1915c retainer payments would "enable waiver participants to continue to receive services in the most integrated setting appropriate to their needs...". In its statement outlining the policy change, CMS specifically noted that, "typically low payment rates make it unlikely that a provider could afford to give up a day's or week's salary because the waiver consumer is hospitalized or otherwise absent" and also noted that, "lack of providers can be catastrophic for an individuals with disabilities." Additionally, CMS announced parameters for the retainer payments, including:

1. Retainer payments are limited to providers of personal assistant services, and
2. 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."

On June 30, 2020 CMS updated its “COVID-19 Frequently Asked Questions for State Medicaid and CHIP Agencies” document. In the updated FAQ, CMS outlined the parameters for 1915c waiver retainer payments:

“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...are circumstances that may prevent individuals from receiving HCBS services.”

Recently, **CMS has authorized states to issue up to three consecutive 30-day episodes of retainer payments per participant** and has noted that a state may set the rate for retainer payments at a percentage below the full rate for that service. In the June 30 FAQ, CMS clarified that consecutive days are those days that are eligible for billing and “as typical day habilitation services are rendered Monday through Friday, 30 consecutive billing days would encompass a 6-week period of time.”

While the 2000 guidance makes clear that retainer payments are available for “personal care services,” CMS has since clarified that, “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” and “encompass most...non-residential day programs providing services.”

States who utilize retainer payments for 1915c HCBS services will be expected to implement the following:

1. 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).
2. 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.
3. Require an attestation from the provider that it will not lay off staff, and will maintain wages at existing levels.
4. 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.
  - a. 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.
  - b. If a provider had already received revenues in excess of the pre-PHE level, retainer payments are not available.

### **COVID Impact on ADHC and ADT Providers**

Kentucky's ADT and ADHC services are in a particularly precarious position during the COVID-19 pandemic. 1915c waiver providers who provide ADT and ADHC services are nearly 100% reimbursed by Medicaid. SCL and Michelle P. waiver ADT and ADHC providers operate with paper thin margins. For the past 152 days ADT/ADHCs providers have experienced a catastrophic reduction in the billable support services they provide. During the period of March 20, 2020 to June 28, 2020 ADTs/ADCs were ordered closed by Governor Beshear to allow individuals with disabilities to remain "health at home." Beginning June 29, 2020, ADTs and ADHCs were permitted to reopen when certain conditions were met. For those that were able to reopen, significantly fewer people are showing up to receive services while the costs of operation remain the same.

Kentucky's ADT/ADHC providers are seeing a collapse in revenue and there is no guarantee they will have the staff and/or financial resources to re-open after the pandemic. This jeopardizes both the sustainability of individual provider organizations as well as long-term access to ADT/ADHC services in Kentucky. According to a KAPP survey, nearly 69% of providers report that they have closed a service a result of COVID-19. 56% of those closed services were ADT and ADHC services.

Additionally, ADHC providers reported an average annualized \$2,012,997.36<sup>1</sup> lost revenue per program. ADT providers reported an average annualized of \$860,288.04<sup>2</sup> lost revenue per program. The financial impact for ADT providers varies greatly depending on program size. The average ADT lost revenue by annual operating budget for the period March 20-April 24 can be found below:

Annual Operating Budget	Average Lost Revenue (3/20-4/24)	Annualized Lost Revenue
\$1-\$500,000	\$30,519.31	\$366,231.72
\$500,000-\$1,000,000	\$60,152.70	\$721,832.40
\$1,000,000-\$2,000,000	\$143,668.17	\$1,724,018.04
\$2,000,000-\$4,000,000	\$211,416.21	\$2,536,994.52

Unfortunately, Telehealth has not been able to sustain ADTs and ADHCs through this pandemic. In fact, many participants do not tolerate virtual day services via Telehealth or do not want to participate via Telehealth. Additionally, outside of Lexington and Louisville virtual ADT services are nearly impossible to provide due to lack of internet access. The few providers who have been able to provide ADT services via Telehealth have been unable bill enough to sustain the program.

1915c waiver ADT and ADHC providers have continued to serve Kentucky's most vulnerable citizens during this state of emergency. They have applied for and exhausted Paycheck Protection Program (PPP) loans, which provided 8 weeks of funding. They have applied for emergency funding through the Health and Human Services (HHS) Provider Relief Medicaid/CHIP portal, which will provide them with funding equal to approximately 7 days revenue. ADT and ADHC providers have exhausted all possible funding sources and have reached a critical breaking point. If CHFS does not immediately address ADHC and ADT reimbursement these providers may not have the resources to continue to provide services. Kentucky has worked hard to establish a robust system of community based care for

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<sup>1</sup> For the period of March 20-April 24 ADHC providers reported an average of \$167,749.78 lost revenue per program.

<sup>2</sup> For the period of March 20-April 24 ADT providers reported an average of \$71,690.67 lost revenue per program.

individuals with intellectual and developmental disabilities and now, Kentucky's most vulnerable citizens risk permanent loss of access to critical support services.

### **KAPP Proposal**

KAPP has been in communication with similar state associations whose states have proposed alternative models under Appendix K of the 1915c home and community based waiver in order to respond to this emergency. Like Kentucky, these models have included flexibility in the service delivery models. However, Medicaid programs in other states have recognized that flexibility in service models alone will not ensure the viability of programs, like ADHCs and ADTs. These states have recognized that such providers also require funding and have provided retainer payments to ensure these programs remain viable.

KAPP requests the following:

1. CHFS issue retainer payments in accordance with CMS guidance to Licensed Adult Day Health Care Centers and to Certified Adult Day Training providers that provide services through Kentucky's 1915c waivers.
2. KAPP requests that retainer payments be **equal to 80% of the established upper payment limit** for the ADT/ADHC service and **be permitted for providers who are temporarily closed or are operating at an in person or virtual attendance below 60% of enrollment.**
3. KAPP requests that retainer payments be issued in accordance with the CMS guidance above.
4. KAPP proposes that in a situation when a provider is both the Residential 1 and the ADT/ADHC provider for a participant, that retainer payments not be issued for that participant if the provider receives the SCL enhanced Residential 1 rate for the participant.

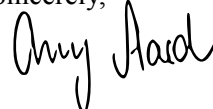
Similar requests have been approved by CMS and have been implemented in other states.

These retainer payments will:

1. Protect Kentucky's robust system of community based care and will ensure that individuals with I/DD maintain access to the services and providers upon which they rely after the pandemic subsidies.
2. Keep Kentuckians employed, off unemployment and in employer-sponsored health plans by requiring ADHC and ADT providers to retain or rehire staff that have been laid off.
3. Increase provider revenue which will lead to an increase in SCL provider taxes, for which the state receives federal match dollars.

Thank you for your consideration of the vitally important matter. Please feel free to contact me at [astaed@mykapp.org](mailto:astaed@mykapp.org) if you have any questions.

Sincerely,



Amy Staed, Executive Director  
Kentucky Association of Private Providers

cc: Wendy Morris  
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