

April 15, 2020

Appendix K Retainer Payment Requests

On April 6, 2020, the Centers for Medicare and Medicaid Services (CMS) approved the Appendix K Emergency Preparedness and Response Waiver Request submitted by the NC Department of Health and Human Services (NC DHHS) on March 13, 2020. This approval permits, as requested in Appendix K, specific flexibilities and/or exceptions to the Home and Community Based Service waivers, including Innovations.

Partners appreciates the close collaboration with our provider network to ensure that the network is stable and available to care for the members we share. In an effort to ensure retention of direct support professionals and avoid disruption of the service system, Innovations Waiver providers will be able to request retainer payments for direct care workers during the COVID-19 pandemic. Please note that Innovation Waiver provider agencies and Employer(s) of Record are encouraged to pay staff their current pay rate even in situations when staff are not able to deliver services due to COVID-19 emergency related issues.

Information regarding Retainer Payments:

- **Appendix K** language states that
 - Retainer payments can be dispersed to direct care workers to address emergency related issues.
 - Retainer payments cannot be provided for more than 30 consecutive days. There can be multiple 30-day periods, however, there must be one day between each 30-day period.
 - The State confirms that retainer payments are for direct care providers who normally provide services that include habilitation and personal care but are currently unable to so due to complications experienced during the COVID-19 pandemic because the waiver participant is sick due to COVID-19 (symptomatic but does not require a positive test result); or the waiver participant is sequestered (per the State Stay at Home order) and/or quarantined based on local, state, federal and/or medical requirements/orders. The state will implement a distinguishable process to monitor payments to avoid duplication of billing.
 - Staff retainer payments may only be made for Innovations Waiver services as authorized in the Individual Service Plan (ISP) on March 13, 2020. Retainer payments are for primary staff that provide regularly scheduled services and are unable to deliver services. Staff members that are identified as back up staff are not eligible for retainer payments.
 - The only services that are available for retainer payments are services that include personal care or habilitation. These services are:
 - Community Living and Supports

- Community Networking
- Day Supports
- Residential Supports
- Supported Living
- Supported Employment.
- Relatives as Direct Support Employees (RADSEs) who were providing services on or before March 13, 2020 are eligible for retainer payments.
- Providers and members may utilize retainer payments because of state of emergency requirements, staff sickness, staff unavailable due to caring for sick family member and/or member sickness, sickness in the member's home, or the need to limit staff from coming into member homes and creating health and safety concerns due to member's increased risk of sickness.
- When a provider secures LME-MCO approval of retainer payment(s), a retainer agreement is implemented between the provider agency and the employee and will include the following statement: *"The employee who is being retained will not be eligible for unemployment for the specific hours in the agreement."*
- The retainer agreement will be approved on a 30-day approval period. The retainer agreement will be reviewed in 30-day intervals to assess the continued appropriateness of the retainer agreement. If the agreement needs to be extended after the 30-day authorization period, another agreement will be implemented with a new 30-day effective period.
- Retainer payments can not add up to more than the total number of hours per service approved in the Innovation member's ISP on March 13, 2020.

Procedures for the Provider Agency to Follow:

1. When the waiver participant/primary caregiver or the hired employee notifies the LME-MCO that the hired employee cannot provide the care, a retainer payment agreement may be initiated for a 30-day period or until such a time that the staff has returned to work
2. Provider agencies and EOR(s) shall maintain documentation (as usual) via the required service grid by entering COVID-19 on the grid with the Qualified Professional's signature/EOR signature and date. COVID-19 billing must include the CR and XU Modifier.
3. This shall be effective beginning March 13, 2020 and will end when the member is again available for services following the COVID-19 emergency.
4. Provider agencies and EOR(s) will submit the following information to Partners every Monday for the previous week, using the form available at <https://providers.partnersbhm.org/covid-19-provider-forms/>. The form can be completed for each member affected or multiple members may be listed on the same form. Please note that:
 - All components of the form need to be completed and submitted

- Providers cannot bill for these services on top of the retainer payments indicated on the form
 - Multiple members can be included from the provider organization on the same form.
 - *This form will serve as an invoice.*
5. By day 25 of the retainer approval, the Provider Agency will conduct a reassessment of continuation of the retainer agreement by assessing the following:
 - a. The ongoing unavailability of the employee
 - b. The health progression of the waiver participant or family
 6. When the retainer agreement is implemented because the employee is sick with the coronavirus, or if the employee has to take care of a sick family member due to symptoms of the coronavirus, the provider will assist the member/family with securing alternative staff.

If you have any immediate questions regarding payments, please contact Sandra Lewis, slewis@partnersbhm.org and for questions regarding other flexibilities in Appendix K, please submit to InnovationsExceptions@partnersbhm.org.