

The Disability and Aging Collaborative &



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

October 19, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue S.W.
Washington, DC 20201

Dear Administrator Verma,

The undersigned member organizations of the Consortium for Citizens with Disabilities (CCD), Disability and Aging Collaborative (DAC), and other state organizations write to raise some concerns about flexibilities that have been vital to state systems in the face of the COVID-19 pandemic, and to encourage you to make allowances for them to continue.

First, it is our understanding that CMS is considering options for timelines for the expiration of Appendix K waivers that have been invaluable to states. We share concerns about the application of twelve-month limits to states' 1915 (c) Appendix K submissions. The flexibilities afforded state HCBS programs through these Appendix Ks have been crucial to maintaining state capacity to effectively serve individuals in need of long term supports and services throughout the pandemic. As you know, Secretary Azar recently extended the COVID-19 Public Health emergency to January 23, 2021. Since a number of the Appendix Ks submitted in response to the COVID-19 pandemic have been in effect since January 27, 2020, this means that many Appendix Ks will extend only a few days after the current end of the PHE—and if the PHE is extended, these Appendix Ks will still end despite the ongoing emergency.

We urge you to permit states, at their discretion, to extend their Appendix Ks to remain in effect for up to twelve months after the end of the Public Health Emergency. As you know, CMS initially developed a timeline for Appendix K expiration of one year from initial start date as a recognition that, after a cataclysmic event, it may take a year to re-establish “typical” services and to shore up the infrastructure of the state’s HCBS service system. Allowing Appendix Ks to be in effect for a year is sufficient when the event triggering the need for the flexibilities

afforded by an Appendix K is a time limited natural disaster. However, applying the same rationale to Appendix Ks created to deal with a months-long Public Health Emergency suggests that CMS should consider the cessation of the PHE as the beginning of the one year post-disaster period. We also note that CMS' instructions state that a transition plan is necessary for waiver participants who might be adversely affected when the temporary changes cease and the waiver reverts back to its original form. CMS should add that, for such individuals, their person centered plan should also address how and when their services will be changed, and what alternatives may be available beyond the end of the PHE.

A second issue for many states and for providers of services for people with disabilities and aging adults is the continued availability of retainer payments. These payments are an indispensable tool for states to keep their HCBS provider networks afloat during periods when they are unable to provide services. We appreciate that CMS clarified that states were eligible for three, 30-day periods of retainer payments. However, we are now entering a new phase of the pandemic, and some states are seeing new spikes. It is still not safe for typical services to resume in many areas, and many states have already used their three retainer payment periods. This poses significant risk to the stability of HCBS provider networks, which are made up of agencies that often operate on little to no margin. We encourage you to review this determination and to extend to states the ability to provide retainer payments beyond the three 30-day periods.

We appreciate your consideration of these issues and would be happy to provide additional information and examples if it would be helpful. To set-up a meeting on the contents of this letter, please contact Nicole Jorwic, at jorwic@thearc.org or 630-915-8339.

Sincerely,