



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 28, 2016

Claudia Caine, President and C.O.O.
NYU Lutheran Medical Center PPS
Lutheran Medical Center
150 55th Street
Brooklyn, New York 11220

Dear Ms. Caine:

On March 11, 2015, the Department of Health (Department), the Office of Mental Health (OMH), and the Office of Alcoholism and Substance Abuse Services (OASAS) were pleased to respond to the request for waivers from certain regulatory requirements submitted by Lutheran Medical Center in its capacity as lead for the NYU Lutheran Medical PPS under the Delivery System Reform Incentive Payment (DSRIP) Program. In that letter, we notified you that your waiver request 32.08, related to Home Care orders, required additional review.

Pursuant to Public Health Law (PHL) § 2807(20)(e) and (21)(e) and in connection with DSRIP Project Plans and projects under the Capital Restructuring Financing Program which are associated with DSRIP projects, the Department, OMH, OASAS and OPWDD may waive regulations for the purpose of allowing applicants to avoid duplication of requirements and to allow the efficient implementation of the proposed projects. However, the agencies may not waive regulations pertaining to patient safety nor waive regulations if such waiver would risk patient safety. Further, any waivers approved under this authority may not exceed the life of the project or such shorter time periods as the authorizing commissioner may determine.

Accordingly, the regulatory waiver responses below are for projects and activities as described in the Project Plan application and any implementation activities reasonably associated with those activities. The regulatory waiver may no longer apply should there be any changes in the nature of a project. It is the responsibility of the PPS and the providers that have received waivers to notify the relevant agency when they become aware of any material change in the specified project that goes beyond the scope of which the waiver was granted. Further, the regulatory waiver approved is only for the duration of the projects for which it was requested.

The approval of regulatory waivers is contingent upon the satisfaction of certain conditions. In all cases, providers must be in good standing with the relevant agency or agencies. Other conditions may be applicable as set forth in greater detail below. The failure to satisfy any such conditions may result in the withdrawal of the approval, meaning that the providers will be required to maintain compliance with the regulatory requirements at issue and could be subject to enforcement absent such compliance.

The specific pending request for regulatory waiver included in the NYU Lutheran Medical Center PPS Project Plan application is addressed below.

32.08
3.c.i, 3.d.ii

Lutheran

10 NYCRR 766.4(a), (b)

2.b.iii, 2.b.ix, 3.a.i,

Background and justification provided in your request:

Section 766.4 allows doctors, midwives, and nurse practitioners to order licensed home care services, but it does not allow Physician Assistants (PAs) to order such care. As part of their efforts to keep patients out of the hospital, the DSRIP projects listed above are likely to involve orders for home care. For example, some patients who come to the emergency room or who obtain care in the PPS's observation unit may be in need of personal care services back at home. Likewise, PPSs may provide home care to patients to help manage their diabetes and asthma care. Allowing PAs to order home care as part of these projects would enable these providers to order such care and thus could potentially play a role in reducing inpatient admissions.

Response to waiver request:

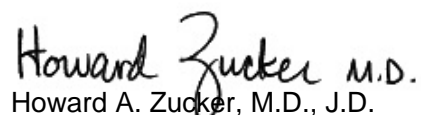
Ordering of home care services by Physician Assistants. Approved solely with regards to LHCSAs. Current state regulation allows doctor of medicine, a doctor of osteopathy, a doctor of podiatry, a licensed midwife, or a nurse practitioner to order home care services for licensed home care services agencies (LCHSAs). This regulation will be waived to allow for physician assistants to order home care services for LHCSAs only. Federal regulation does not allow nurse practitioners or physician assistants to order home care services for certified home health agencies (CHHAs) or long term home health care programs (LTHHCPs) and we do not have the authority to waive federal regulations under DSRIP.


In cases where waivers are approved, the agencies will send letters directed to the providers which otherwise would be responsible for complying with the regulatory provisions at issue. Providers further will be advised that agency staff who conduct surveillance activities will be notified that these regulatory waivers have been approved; however, they should maintain a copy of their waiver letters at any site subject to surveillance.

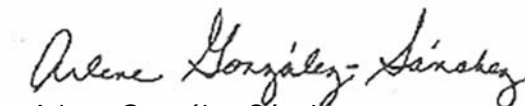
Please note that the Department will continue to publish on its website a list of regulatory waivers that have been approved to assist PPSs in determining whether additional waivers may be appropriate for the activities within a PPS. Additional requests for waivers, as well as any questions regarding the foregoing, may be sent by email to DSRIP@health.ny.gov with Regulatory Waiver in the subject line.

Thank you for your cooperation with this initiative. We look forward to working with you to transform New York's delivery system.

Sincerely,


Howard A. Zucker, M.D., J.D.
Commissioner of Health


Ann Marie T. Sullivan, M.D.
Commissioner
New York State Office of Mental Health


Arlene González-Sánchez
Commissioner
New York State Office of Alcoholism
And Substance Abuse Services