



Department
of Health

Office of
Mental Health

Office of Alcoholism and
Substance Abuse Services

December 15, 2015

New York Hospital Medical Center – Queens PPS
Maureen Buglino, VP Community & Emergency Medicine
New York - Presbyterian Queens
56-45 Main Street
Flushing, New York 11355

Dear Ms. Buglino:

The New York State Department of Health (Department), the Office of Mental Health (OMH), and the Office of Alcoholism and Substance Abuse Services (OASAS) are pleased to respond to the request for waivers from certain regulatory requirements submitted under the Delivery System Reform Incentive Payment (DSRIP) Program. This letter responds to the request submitted by New York Hospital Medical Center Queens, in its capacity as lead for New York Hospital Medical Center Queens Performing Provider System (PPS).

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, and OASAS 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, any regulatory waivers approved herein are for projects and activities as described in the Project Plan application and any implementation activities reasonably associated therewith. Such regulatory waivers 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 for which the waiver was granted. Further, any regulatory waivers approved are only for the duration of the projects for which they were requested.

The approval of regulatory waivers are 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.

Specific requests for regulatory waivers included in New York Hospital Medical Center Queens PPS Project Plan application are addressed below.

1 New York-Queens PPS 10 NYCRR 600.9(c)

Background and justification submitted in your waiver request:

To the extent that the distribution of DSRIP Program Incentive funds may be construed to be participation in the total gross income or net revenue of a medical facility (the lead applicant, NYPQ) by non-established members of the Performing Provider System, application of the regulation would prevent the accomplishment of DSRIP goals, i.e., the providing of an incentive and financial relief to entities to facilitate reform of the health care delivery system serving Medicaid eligibles and recipients. In this circumstance, absent a waiver DSRIP program funds could not be distributed to non-established members of the PPS. Alternative governance structures that would not require NYPQ, as lead applicant, to receive and distribute the DSRIP payments, were considered by the NYPQ PPS. However, it was determined that, at this stage of the PPS's development, utilization of a collaborative governance model among the partners for joint development and implementation of the functions and project plans would provide the most efficient and effective mechanism for a successful launch of the PPS and provide a framework for consideration of possible changes to the governance model based upon the initial experience with the PPS, and developments in the DSRIP Program. Other structures will be considered as the PPS matures. The concern reflected by the rule from which waiver is sought is that entities and individuals who had not been subject to Department of Health review, and who were not under the obligations of established providers under New York's statutory and regulatory scheme, would have a financial interest in established entities and would have an impact on the operations of such established entities, based solely or disproportionately upon financial considerations. DSRIP funds will be distributed based upon a methodology that will be managed through the NYPQ PPS governance process. The methodology reflects resources applied to the DSRIP project plans by the PPS members, and payments will be made only upon completion of the desired activities and, ultimately, upon accomplishment of the desired goals. The goals encompass enhanced access to and improved quality of care provided, and the reduction of unnecessary services to Medicaid eligibles and recipients. The policies and procedures designed to implement each project plan will ensure that patient safety will be improved, rather than placed at increased risk. Both the state and the PPS governance structure will monitor the activities of the NYPQ PPS members, including their achievement of project milestones and key quality metrics, and their success in accomplishing the DSRIP goals of increased access, higher quality care, and lower cost, further ensuring that patients' health is not only not placed at greater risk, but is enhanced by the program.

Response to Waiver Request:

Revenue Sharing. Approved. The PPS requested a waiver of 10 NYCRR 600.9(c), pertaining to revenue sharing. The waiver is approved only to the extent that the regulation otherwise would prohibit providers from receiving DSRIP incentive payments distributed by the PPS Lead utilizing the DSRIP flow of funds protocol.

2 New York-Queens PPS 10 NYCRR 405.9(a)(1)

Background and justification submitted in your waiver request:

To the extent that the distribution of DSRIP Program Incentive funds may be construed to be the splitting or sharing of fees between members of the Performing Provider System that may be considered “referring agencies” and the lead applicant of the PPS, NYPQ, application of the regulation would prevent the accomplishment of DSRIP goals, i.e. i.e. the providing of an incentive and financial relief to entities to facilitate reform of the health care delivery system serving Medicaid eligibles and recipients. Entities concerned about violating this prohibition would not be able to participate in any DSRIP project.

Response to Waiver Request:

Transfer and Affiliation Agreements. No waiver needed. The PPS requested a waiver of 10 NYCRR 405.9(a) regarding establishing and implementing written admission and discharge policies. No waiver is needed as no additional transfer and affiliation agreements are needed, provided the PPS has already established such policies among the partners within the PPS. Such agreements must meet the requirements listed in 10 NYCRR 405.9.

3 New York-Queens PPS 10 NYCRR 405.9(b)(2), (f)(7)

Background and justification submitted in your waiver request:

To the extent that the implementation of DSRIP project plans, which target Medicaid beneficiaries and eligibles, Medicaid being the source of payment, may be construed to contravene 10 N.Y.C.R.R. 405.9(b)(2), (f)(7), application of the regulation could inhibit the accomplishment of DSRIP goals, i.e. the targeting of specific resources to the Medicaid population in order to enhance access to and determine the appropriate level of care, or expedite transfer or discharge from a hospital, with the goal of avoiding unnecessary hospital utilization. In this circumstance, absent a waiver, many aspects of the DSRIP project plans might be impacted. Implementation of the project plans, however, would not interfere with clinically indicated hospital admissions or stays.

Response to Waiver Request:

Admission, Transfer and Discharge. No waiver needed. The PPS requested a waiver of 10 NYCRR 405.9(b)(2), (f)(7), which provide important protections related to the admission, transfer or discharge of patients from in-patient settings, including prohibiting decisions about admission, transfer or discharge based on source of payment. No regulatory waiver is needed for purposes of permitting transfers and discharges of patients between PPS partners, provided that decisions to admit, transfer or discharge are clinically-based and appropriate documentation is made thereof.

4 New York-Queens PPS 10 NYCRR 401.3(a), 710.1(b)

Background and justification submitted in your waiver request:

Among the cornerstones of the DSRIP program are the support of population health management and exchange of information across settings of care, in order to increase care management and coordination of care among PPS participants, among other things. Important

features include technology to drive decision support, incorporation of registries, and facilitation of patient population stratification, support of patient engagement, provision of outcome data, and support of financial and risk management. Investment in technology is a key component of the DSRIP program. Successful project implementation also requires achievement of PCMH standards, for which enhanced information technology is necessary. Speed and scale criteria are intertwined with milestone achievement as well. Delays caused by full CON review of HIT changes will undermine the PPS' ability to timely accomplish these goals.

Response to Waiver Request:

HIT Standards. Approved. The PPS requested waivers pertaining to CON review of Health Information Technology (HIT) changes in existing medical facilities. The waiver request is approved to waive the financial review however the Department must review each project on a case-by-case basis to ensure IT standards are met. The PPS should contact the Department's Office of Health Information Technology (OHIT) for approval. To do so, please contact: SHIN-NY@health.ny.gov.

5 New York-Queens PPS 18 NYCRR 540.6(e)(4)

Background and justification submitted in your waiver request:

Implementation of various DSRIP projects require the application of additional resources at the provider level, and particularly the services of physician assistants and nurse practitioners at nursing homes and home care agencies, for which compensation will, in various instances where payment is otherwise available, be offset against revenue otherwise payable by the Medicaid program. Waiver of this regulation would make available resources and facilitate the utilization of staff that will have a substantial impact on the ability of the PPS to accomplish the purposes of the specified projects. The INTERACT program in particular will have the goal of stabilizing patients in order to avoid transfer to an acute care facility.

Response to Waiver Request:


Billing. Denied. Federal regulations outline provisions that state agencies must follow in paying such claims and the Department does not have the authority to waive federal regulations.

In cases where waivers are approved, the agencies will send letters directed to the providers, who otherwise would be responsible for complying with the regulatory provisions at issue. Further, providers 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 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 e-mail 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
New York State Department 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
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