



October 5, 2016

Finger Lakes Performing Provider System  
Nathan M. Franus, MBA  
Senior Project Manager  
2100 Brighton Henrietta Town Line Road, Suite 250  
Rochester, New York 14623

Dear Mr. Franus:

The New York State Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS) and the Office for People With Developmental Disabilities (OPWDD) 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 the Finger Lakes 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, 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, 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 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 requests for regulatory waivers are addressed below.

**1 Finger Lakes NYCRR 599.14 (d) (1) 3.a.ii**

**Background and justification provided in your request:**

Rochester Regional Health System and Genesee Mental Health currently have outpatient mental health clinics. They have applied for an extended hours provision, starting September 12, 2016. This would make the clinics available to current patients, new patients, and existing patients with other providers. The nature of crisis intervention and Emergency Room/Psychiatric Hospitalization diversion often requires more than three "pre-admission" visits, in order to fully engage a patient and successfully move them into care, either within the RRH System, or back to current providers. For a large inner city community area, this facility provides a reasonable alternative to ER use. The alternatives a) to restrict participation in extended hours services to patients not already enrolled in services elsewhere. b) operate with a limited revenue stream (i.e. a three visit limit), impacting the sustainability of the project. Patient safety is not impacted. The facility is located and currently operational on an existing health care campus, with adequate parking, security, and easy building access. The facility will extend hours of the campus security staff to cover its hours of operation.

**Response to waiver request:**

**Approved with contingencies** - Approval is contingent upon the waiver only applying to individuals in receipt of crisis stabilization services, not to individuals enrolled in clinic treatment per 14 NYCRR Part 599.

**2 Finger Lakes 14 NYCRR 599.14 (d) (f) 3.a.ii**

**Background and justification provided in your request:**

Rochester Regional Health System and Genesee Mental Health currently have outpatient mental health clinics. They have applied for an extended hours provision, starting September 12, 2016. This would make the clinics available to current patients, new patients, and existing patients with other providers. The nature of crisis intervention and Emergency Room/Psychiatric Hospitalization diversion often requires more than three "pre-admission" visits, in order to fully engage a patient and successfully move them into care, either within the RRH System, or back to current providers. For a large inner city community area, this facility provides a reasonable alternative to ER use. The alternatives a) to restrict participation in extended hours services to patients not already enrolled in services elsewhere. b) operate with a limited revenue stream (i.e. a three visit limit), impacting the sustainability of the project. Patient safety is not impacted. The facility is located and currently operational on an existing health care campus, with adequate parking, security, and easy building access. The facility will extend hours of the campus security staff to cover its hours of operation.

**Response to waiver request:**

**Approved with contingencies.** Approval is contingent upon the waiver only applying to individuals in receipt of crisis stabilization services, not to individuals enrolled in clinic treatment per 14 NYCRR Part 599.

**Background and justification provided in your request:**

In conversations with the Department in September 2015, FLPPS proposed an observation unit within a hospital outpatient facility or at an off campus crisis residence for up to 48 hours of monitoring. FLPPS was asked to demonstrate how it fit the definition of a crisis residence by having the appropriate services available. FLPPS has provided a listing of services to be offered, including Apartment Support Community Residence, Apartment Treatment Community Residence, Children and Youth Community Residence, Congregate Support Community Residence, Congregate Treatment Community Residence, Crisis Residence, Teaching Family Home, and Service Enriched SRO.

**Response to waiver request:**

**OMH/OASAS – Denied.** - Any "24-hour stay" would go beyond the constructs of what can be allowed via an outpatient setting. Once that threshold is reached, the Center becomes an inpatient or residential setting, triggering other regulatory/reimbursement issues that cannot be supported via the DSRIP regulatory waiver constructs. As such, this request cannot be supported.

**OPWDD - More Information Needed.** Please submit a request with specific regulatory citation, justification and description of impact on safety as related to OPWDD services.

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 of Health 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](mailto: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.

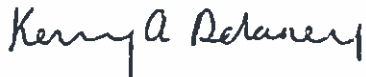
Sincerely,



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



Kerry A. Delaney  
Acting Commissioner  
New York State Office for People  
With Developmental Disabilities