



Department
of Health

Office of
Mental Health

Office of Alcoholism and
Substance Abuse Services

October 4, 2017

Central New York Care Collaborative, Inc.
Virginia A. Opipare
Executive Director
109 Otisco Street, 2nd Floor
Syracuse, New York 13204

Dear Ms. Opipare:

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 the Central New York Care Collaborative 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 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 request for regulatory waiver is addressed below.

1 CNYCC 10 NYCRR 766.4(b)

Background and justification provided in your request:

CNYCC seeks this regulatory waiver to allow physician assistants to issue orders for licensed home care services for patients. 10 NYCRR 766.4 allows a doctor of medicine, doctor of osteopathy, a doctor of podiatry, a licensed midwife, or a nurse practitioner to order licensed home care services for a patient, but does not permit such medical orders to be issued by a physician assistant. In an effort to help patients appropriately remain out of an inpatient setting, and/or to more readily transition to or continue to stay in his/her home, this DSRIP Project is likely to involve orders for home care at some point. Allowing physician assistants to order such licensed home care services would make it more efficient and effective for our PPS providers to order such care. As a result, this will likely have a role in reducing avoidable emergency room visits or inpatient hospitalization.

Response to waiver request:

Ordering of home care services by Physician Assistants. Approved. The request to waive 10 NYCRR 766.4(b) is 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 (LHCSAs). 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. This waiver also does not allow physicians assistants or nurse practitioners to provide home care services in the home unless they contract with a licensed home care service agency as detailed in 10 NYCRR 766.4(a) and as allowable under Federal and State law.

2 CNYCC 10 NYCRR 400.11(a)

Background and justification provided in your request:

This Department regulation governing the performance of the assessment of a potential long term care patient limits the type of professional who is authorized to complete the hospital/community PRI, or the PRI as appropriate for initial or continued placement, to a registered nurse who has successfully completed an appropriate training program. This restriction limits the flexibility that Project teams need in implementing design plans and facilitating transfers from hospitals to nursing homes. CNYCC requests the waiver of this restriction to allow other qualified members of the Team or other staff to complete the PRIs. Such individuals could include PRI-credentialed physical therapists, occupational therapists, social workers, physician assistants and others.

Response to waiver request:

Registered nurse requirement for PRI. Approved with contingencies. The request to waive 10 NYCRR 400.11(a) is approved and the PRI assessment tool may also be completed by occupational therapists, physical therapists, physician assistants and physicians. Social workers are not permitted to complete PRI assessments.

The above additional professionals may complete the PRI assessment tool given that:

1. They have completed the necessary training and certification.
2. Any PRI assessment tool completed by these additional professionals must include both this waiver letter and documentation of appropriate training and certification (which must also be sent with the tool for the receiving facility's record).

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

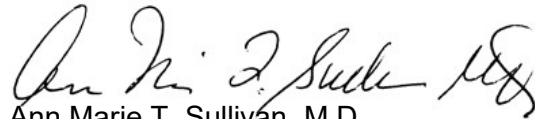
Sincerely,



Howard A. Zucker, M.D., J.D.
Commissioner
New York State Department of Health



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



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