



**COPA Application # COPA-SIPPS
Staten Island PPS**

Purpose: Application for Certificate of Public Advantage (COPA)

Executive Summary

Program Overview

Public Health Law (“PHL”) Article 29-F sets forth the State’s policy of encouraging appropriate collaborative arrangements among health care providers who might otherwise be competitors. The statute requires the New York State Department of Health (“Department”) to establish a regulatory structure allowing it to engage in active state supervision as necessary to provide state action immunity under federal antitrust laws and immunity from private claims under state antitrust laws.

The regulations establish a process for providers to apply for a Certificate of Public Advantage (“COPA”) for collaborative arrangements such as mergers and clinical integration agreements. A COPA issued by the Department signifies approval of a cooperative agreement and provides conditions that the Department determines to be appropriate in order to ensure that the cooperative agreement and the activities conducted under it are consistent with PHL Article 29-F. A COPA may be issued if the procompetitive benefits likely to result from the cooperative agreement outweigh the agreement’s anticompetitive effects.

The COPA process is available to “Performing Provider Systems” (“PPSs”) under the Delivery System Reform Incentive Payment (“DSRIP”) Program with respect to their DSRIP projects and activities. DSRIP is a five year program to fundamentally restructure the health care delivery system by reinvesting in the Medicaid program, reducing avoidable hospital use and making other health and public health improvements. For purposes of COPA applications submitted by PPS under DSRIP, each PPS’s DSRIP Project Plan

application serves as the cooperative agreement, as supplemented by additional information.

Section 83-2.5 of Title 10 of the New York Codes, Rules and Regulations (“NYCRR”), issued pursuant to PHL Article 29-F sets forth factors to be considered during the review of a COPA application. These include the financial condition of the parties, the dynamics of the relevant primary service area, the potential benefits of the collaborative activities, the potential disadvantages including but not limited to a reduction in competition, the availability of arrangements that are less restrictive to competition, and the extent to which active supervision is likely to mitigate the disadvantages.

Summary of Analysis

The co-leads for the Staten Island Performing Provider System, LLC (“Staten Island PPS”), Staten Island University Hospital and Richmond University Medical Center, submitted an application for a COPA in conjunction with the PPS’s DSRIP Project Plan.

Based on consideration of the factors set forth in 10 NYCRR § 83-2.5, it is proposed that a COPA be issued to the Staten Island PPS with certain conditions as set forth below. Issuance of the COPA will support the PPS in achieving its objectives under its DSRIP Project Plan – transforming into a more integrated delivery system premised on care which is coordinated through aligned goals and incentives and which includes the ability to share health information and communicate across providers. These activities are anticipated to have procompetitive effects that will greatly improve the quality and availability of health care services provided to the Medicaid population on Staten Island.

Proposed COPA

Other New York State Agencies

The New York State Department of Health has consulted with the New York State Office of the Attorney General, the New York State Office of Mental Health, the New York State Office of Alcoholism and Substance Abuse Services, and the New York State Office for People With Developmental Disabilities. Following such consultation, the Department proposes to issue a COPA, together with the conditions enumerated below, to the Staten Island PPS.

Proposed COPA:

The New York Department of Health (“Department”) grants this Certificate of Public Advantage (“COPA”) to the Staten Island Performing Provider System (“Staten Island PPS” or “PPS”) with the intent of providing state action immunity under federal antitrust laws and immunity from private antitrust claims, to the extent afforded by Public Health Law (“PHL”) Article 29-F and Subpart 83-2 of Title 10 of the New York Codes, Rules and Regulations (“NYCRR”) and any other applicable state statute or regulation, for PPS Medicaid activities reasonably necessary to achieve the objectives of the PPS’s Project Plan application under the Delivery System Reform Incentive Payment (“DSRIP”) program. This COPA extends these protections solely to the PPS’s Medicaid activities in connection with its participation in the DSRIP program and has no bearing on the PPS’s conduct outside of the DSRIP context.

This COPA is conditioned upon:

- 1. the PPS’s acknowledgement that it shall not invoke the COPA or the antitrust immunity provided therewith for any purpose unrelated to Medicaid activities undertaken by the PPS for the achievement of the DSRIP objectives as set forth in the PPS’s DSRIP Project Plan;**
- 2. the PPS’s acknowledgement that any material changes to the representations, documentation or information provided to the Department in connection with the PPS’s COPA or DSRIP Project Plan, or in connection with PPS Medicaid activities reasonably necessary to achieve the objectives of the PPS Project Plan under DSRIP, may result in the imposition of additional conditions or other remedies under the applicable regulations, including but not limited to revocation of the COPA; and**
- 3. the PPS’s continued adherence to and compliance with all applicable requirements under PHL Article 29-F and 10 NYCRR Subpart 83-2, including but not limited to the submission of reports as required under 10 NYCRR Subpart 83-2 and the DSRIP program and as otherwise requested by the Department.**

This COPA shall be valid only until March 31, 2020, the termination of the PPS’s participation in the DSRIP program, the surrender of the COPA pursuant to 10 NYCRR § 83-2.14 (Voluntary Surrender), or the revocation of the COPA pursuant to 10 NYCRR § 83-2.12 (Revocation), whichever occurs first.

Nothing in the foregoing paragraphs should be construed to limit the applicability of PHL Article 29-F, 10 NYCRR Subpart 83-2, any other applicable law or regulation, or any remedies set forth in any applicable law or regulation, including but not limited to revocation of the COPA for other reasons as set forth in the applicable regulations.

Analysis

Project Description

The co-leads for the Staten Island Performing Provider System, LLC, Staten Island University Hospital and Richmond University Medical Center, submitted a COPA application in conjunction with the PPS's DSRIP Project Plan application.

Structure of the Staten Island PPS

The Staten Island Performing Provider System is a "Performing Provider System" under the Delivery System Reform Incentive Payment ("DSRIP") Program. As set forth in the Special Terms and Conditions ("STCs") governing DSRIP, as agreed to by the State and the Centers for Medicare and Medicaid Services ("CMS"), DSRIP providers collaborate as part of "Performing Provider Systems" ("PPSs"). A PPS must include a diverse group of providers engaged in medical, behavioral and social services in a given service area to ensure that the PPS is best positioned to deliver integrated and coordinated care and address the social determinants of health with a goal of improving both access to and quality of care. Accordingly, PPSs include both major public hospitals and safety net providers such as hospitals, health homes, skilled nursing facilities, clinics and federally qualified health centers, behavioral health providers and community-based organizations. See, generally, DSRIP Frequently Asked Questions, available at http://www.health.ny.gov/health_care/medicaid/redesign/dsrip/dsrip_faq/index.htm.

Each PPS is led by a designated lead provider ("PPS Lead") and has an established governance structure allowing oversight of provider participation and execution of projects and a process for decision-making about flow of funding and the clinical metrics that will be monitored and reported. PPS partners collaborate in the design and implementation of a range of projects focusing on system transformation, clinical improvement and population health improvement. Consistent with the STCs, each PPS submitted an overall plan known as its DSRIP Project Plan, which had to include between 5 and 11 projects chosen from the DSRIP Project Toolkit, available at http://www.health.ny.gov/health_care/medicaid/redesign/docs/dsrip_project_toolkit.pdf. The Toolkit grouped projects, along with their milestones and associated metrics, into four Domains:

- Overall Project Progress Projects (Domain 1);
- System Transformation Projects (Domain 2);
- Clinical Improvement Projects (Domain 3); and
- Population-Wide Projects (Domain 4).

The Staten Island Performing Provider System, LLC ("Staten Island PPS"), is an entity formed by the PPS co-leads, the Staten Island University Hospital ("SIUH") and the Richmond University Medical Center ("RUMC"), to oversee the Staten Island PPS in its implementation and operation of its DSRIP program. The Staten Island PPS is a network consisting of the SIUH and RUMC systems, including their general hospitals, as well as a number of local health care providers, the majority of which are located on Staten Island. The PPS maintains a website at <http://www.statenislandpps.org>.

The Staten Island PPS is the only PPS serving Staten Island, which is a water-locked borough of New York City. Staten Island neighborhoods generally are referenced as belonging to one of three regions: the North Shore, Mid-Island, and South Shore. Although the majority of the population and businesses, including health care organizations, are located in the North Shore and Mid-Island regions, Staten Island's health, social service, and community-based providers serve the entire borough.

SIUH is a tertiary teaching hospital with two campuses and is a Northwell Health System member hospital. The North Campus, with 508 beds, is located on the North Shore of Staten Island, and the South Campus, 206 beds, is located in the South Shore region. In addition to comprehensive inpatient

services, SIUH offers outpatient care, short-term inpatient detoxification services and chemical dependency rehabilitation services.

RUMC is an acute care hospital with two campuses, both located on the North Shore of Staten Island. The location on Bard Avenue has 448 beds, while RUMC-Bayley Seton has 25 beds. RUMC has achieved National Committee for Quality Assurance Level 3 Patient Centered Medical Home status for its adult and pediatric primary care center. In addition to comprehensive inpatient and outpatient services, RUMC offers extensive behavioral health care and has a Certified Psychiatric Emergency Program with 10 extended observation beds for behavioral health patients. RUMC is also opening a co-located pediatric program with the Staten Island Mental Health Society, with which RUMC is in the process of merging, and offering primary care at South Beach Psychiatric Center.

Consistent with the requirement that PPSs include participation of medical, behavioral and social services providers, the Staten Island PPS includes a broad range of providers serving the local Medicaid community on Staten Island. In addition to RUMC and SIUH, PPS partners include ambulatory surgical centers, mental health and substance use disorder services providers (collectively "behavioral health providers"), home health agencies, federally qualified health centers, large physician groups and numerous physician providers, skilled nursing facilities, managed care organizations, a health home (comprised of multiple agencies), hospice providers and multiple community-based organizations. In addition to SIUH and RUMC, other large providers include the Community Health Center of Richmond and Beacon Christian Community Health Center.

The Staten Island PPS is organized with a centralized management and decision making structure which reserves certain fundamental decisions for the two LLC members, SIUH and RUMC, but vests day-to-day operational decisions in a Board of Managers, the members of which are appointed by SIUH and RUMC. The PPS is supported by a Project Management Office ("PMO"), which includes an Executive Director and Project Managers as well as a number of internal committees that report to the Board of Managers, including: (1) a Steering Committee, comprised of representatives from over 50 PPS partners, which serves in an advisory role to the LLC generally and provide project-related consultation to the Board; (2) a Project Advisory Committee, comprised of representatives from a diverse group of PPS partners and other community interest organizations, which will obtain feedback from participating providers and stakeholders on Staten Island PPS initiatives and make recommendations based on such feedback; (3) multiple Governance Committees (Finance Committee, Clinical Committee, Data/IT Committee, Workforce Committee, Compliance Committee, Communication & Marketing Committee, and Diversity & Inclusion Committee), which will coordinate tasks and responsibilities through the PMO to the respective project teams.

1. Financial Condition

As set forth in 10 NYCRR § 83-2.5(a), factors considered during the review of a COPA application include the financial condition of the parties to the cooperative agreement. In this case, the financial characteristics of the relevant transaction – participation in the design and implementation of the PPS's DSRIP projects – relate to the receipt and use of DSRIP payments as well as other investments made by PPS partners.

In general, under the DSRIP Program, DSRIP payments are tied to performance and are paid to PPSs if and when milestones are achieved, measured by factors such as utilization rates, cost controls, reduction in avoidable hospital re-admissions, quality of health care services and delivery, and improved outcomes. Funding will be distributed to PPS partners according to the methodology developed by the PPS Lead in accordance with the PPS governance process. In the case of the Staten Island PPS, DSRIP funds are paid to the PPS, which allocates funding to the co-lead entities, SIUH and RUMC, then distributes such funds to PPS partners pursuant to an established formula.

The Staten Island PPS providers will use these allocated funds and their own funds to cover the costs of project implementation and related costs. The Staten Island PPS self-funded portion is at risk and

will be a sunk cost if the Staten Island PPS fails to meet specific milestones. This financial risk is substantial and provides strong incentive to the Staten Island PPS providers to work toward achieving the milestones and the goals of the Staten Island PPS and to improve the quality and control the costs of the health care services provided by the Staten Island PPS to its Medicaid recipients.

2. Competitive Dynamics of the Relevant Primary Service Area

Pursuant to 10 NYCRR § 83-2.5(b), factors considered during the review of a COPA application include the competitive dynamics of the relevant primary service area.

Staten Island PPS partners are primarily located on Staten Island and collectively account for the substantial majority of all providers on Staten Island, accounting for a very high proportion of providers in virtually all categories of services. For Medicaid consumers, based on historical emergency department and inpatient discharges, there is very little outmigration for care to other New York City boroughs or New Jersey. In 2013, 85.8% of all Staten Island resident Medicaid and Medicaid/Medicare dual eligible inpatient discharges were at RUMC and SIUH.

Staten Island's comparably smaller market for health care services in the New York City metropolitan area and history of provider collaboration and shared understanding of the community among health, social service, and community-based organizations provides a favorable environment to achieve population-based health care through a more integrated delivery system.

3. Potential Procompetitive Benefits

Section 83-2.5(c) of the regulations provides that among the factors considered during the review of a COPA application are the potential procompetitive benefits of a cooperative agreement or planning process. These include: (a) preservation of needed health care services in the relevant geographic area that would be at risk of elimination in the absence of a cooperative agreement; (b) improvement in the nature or distribution of health care services in the area, including expansion of needed health care services or elimination of unnecessary health care services; (c) enhancement of the quality of health care provided by the parties to the cooperative agreement; (d) expansion of access to care by medically-underserved populations; (e) lower costs and improved efficiency of delivering health care services, including reductions in administrative and capital costs and improvements in the utilization of health care provider resources and equipment; and (f) implementation of payment methodologies that control excess utilization and costs, while improving outcomes.

The goals and objectives of the Staten Island PPS are set forth in its DSRIP Application at http://www.health.ny.gov/health_care/medicaid/redesign/dsrip/pps_applications. As explained by the applicant, the Staten Island PPS was formed to transform the Medicaid health care service delivery system for its Medicaid population into an integrated proactive delivery system where health care is properly coordinated across the continuum of care with aligned goals and incentives, and which incentivizes the collaboration and sharing of electronic health information and communication across PPS providers. This integrated collaboration is designed to provide clinically integrated delivery of health care services, resulting in improved and more efficient health care delivery, lower costs, strengthened outpatient and community-based services and substantially reduced hospital admissions.

The PPS anticipates that its participation in DSRIP will generate substantial procompetitive benefits and efficiencies for local Medicaid beneficiaries and low-income communities on Staten Island. In particular, it will provide the historically underserved Medicaid and low-income Staten Island communities with increased access to, and choice among, local providers who are committed to improving their patient care experiences, improving overall population health and reducing per capita costs of health care. Furthermore, the Staten Island PPS expects that its participation in DSRIP will

lead to a substantial increase in the local provision of primary care and preventative services, as well as care coordination and disease management services for the Medicaid population.

The PPS identified 12 specific goals to be achieved:

- a. develop an infrastructure that achieves transformation and serves patients more efficiently through investments in technology, tools, and human resources;
- b. expand access to the appropriate level of care and reduce barriers to care for all patients, including linguistic and cultural barriers for Medicaid enrollees and individuals who are uninsured;
- c. expand outpatient and community services, including home care, ambulatory detox, behavioral health/substance abuse and primary care, to reduce avoidable hospital and emergency department use;
- d. improve the overall health of the community on Staten Island;
- e. improve coordination of care and develop an integrated network, to help improve overall care and limit inappropriate utilization of services;
- f. improve care management for high risk patients, including patients with chronic acute and behavioral conditions;
- g. develop population health care capacity by performing population wide analytics and risk stratification to proactively identify patients and effectively prioritize outreach activities and interventions;
- h. integrate technology to allow for the secure exchange of health information across PPS partners, helping improve coordination and integration of the care continuum;
- i. reduce per person costs for providing care by achieving the appropriate utilization of services for Medicaid beneficiaries and uninsured individuals;
- j. engage uninsured individuals and low utilizing Medicaid enrollees and connect them to care, including appropriate prevention and management services;
- k. implement innovative and evidence-based care models throughout the care continuum for purposes of improving the overall care delivery for patients on Staten Island; and
- l. implement learning collaboration and training programs that will allow PPS partners to best practices and innovative approaches to drive quality improvement for all patients.

To accomplish these goals, the Staten Island PPS pursues a number of DSRIP projects. In addition to meeting the "Domain 1" project milestones and metrics, which include requirements pertaining to infrastructure, the PPS will work to meet milestones under 11 projects under Domains 2, 3 and 4, as outlined in its Project Plan.

The Staten Island PPS intends to focus on three key attributes to help contribute to the success of these efforts: (a) the development of an IT infrastructure with technology, tools and resources to enable Staten Island PPS providers to share electronic health information and communications efficiently across providers and through the continuum of care; (b) clinical integration of health care services across the Staten Island Medicaid population and the continuum of care; and (c) performance based financial incentive payments based on achievement of various milestones and success measurements and development of a Value-Based Payment system for the Staten Island PPS providers. These attributes are designed to drive integration across the PPS and result in

improved delivery of health care services, enhanced quality of services and reduced costs. The broad participation in the Staten Island PPS among the Staten Island Medicaid health care providers fosters clinically integrated continuity of health care across the spectrum of the health care needs of the Staten Island's Medicaid population.

The DSRIP structure creates incentives for local health care providers to adjust the mix of services provided to patients, and to increase the utilization of primary care screening and preventive services, to reduce the need for, and unnecessary use of, more expensive options, including emergency room visits and hospital admissions and readmissions. The Staten Island PPS is structured to insure that it satisfies the metrics and measurements associated with its DSRIP projects and accomplishes its targeted benefits and efficiencies in a timely fashion, in accordance with the overall DSRIP structure. Individual milestones will be measured by the Staten Island PPS on a quarterly basis and reported to the Department. In addition, corrective actions must be implemented if necessary to ensure that the benefits and efficiencies of the Staten Island PPS DSRIP program are achieved. In the event that the performance results do not satisfy the required standards, the PPS and its providers will not receive the incentive bonus payments tied to achieving such performance.

Based on the above, the Staten Island PPS, with its framework of technology infrastructure to provide electronic medical records and care information sharing, clinical integration of health care services system-wide, collaborative and proactive community-based delivery of health care services, and performance based financial incentives, seems likely to deliver substantial benefits in the provision of Medicaid health care services to the Staten Island Medicaid population. Given the design and framework of the DSRIP program, the network wide infrastructure, the required collaboration and joint activities, and the shared risks across the Staten Island PPS, these efficiencies will be the result of the joint activities and infrastructure that the Staten Island PPS structure makes possible, and which could not occur absent the Staten Island PPS providers acting jointly and integrating their provision of services through the proposed DSRIP program.

4. Potential Anticompetitive Effects

Section 83-2.5 provides that among the factors considered during the review of a COPA application, the Department must consider the potential anticompetitive effects of the agreement, including: (a) the potential for increased costs or prices of health care in the primary service area resulting from the cooperative agreement, after taking into consideration improvements in quality and outcomes; (b) diminished quality, availability, and efficiency of health care services; (c) inability of health care payers or health care providers to negotiate reasonable payment and service arrangements; and (d) reduced competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, health care providers and the potential for adverse health system quality, accessibility and cost consequences.

In the case of the Staten Island PPS, the high concentration of Staten Island providers participating in the PPS, as noted in paragraph 2 above, has the potential to cause anticompetitive effects. In particular, although DSRIP is limited to improving the health care options available to Medicaid consumers, collaboration by such a high percentage of providers could result in an anticompetitive effect in the commercial market. Such collaboration could, for example, create the opportunity for providers to improperly jointly manipulate negotiations with commercial insurers. While the COPA application is not intended to provide any antitrust immunity to any activity in the commercial market, the potential anticompetitive effects may be mitigated by several factors, as outlined in paragraph 6 below.

5. Availability of Less Restrictive Arrangements

Section 83-2.5(e) provides that consideration of a COPA application should take into account the availability of arrangements less restrictive to competition that could achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition.

In this case, given the structure and objectives of the overall DSRIP program, particularly given the opportunities to collaborate in improving access to and quality of health care services for Medicaid consumers in Staten Island while reducing costs and achieving the other objectives identified by the Staten Island PPS, as well as the unique nature of Staten Island, there does not appear to be any less restrictive option available.

The work of the PPS is consistent with the overall goals of DSRIP: transforming the safety net system, reducing avoidable hospital use and achieving improvements in health and public health, and promoting sustainability of system transformation through managed care payment reform.

6. Mitigation of Anticompetitive Effects

It is expected that the potential anticompetitive effects outlined in paragraph 4 will be mitigated in several ways.

First, the Staten Island PPS has represented that it is a “non-exclusive” provider network, meaning that each of the participating providers in the Staten Island PPS is free to make its own unilateral and independent decisions with respect to contracting with commercial payers. The Staten Island PPS has further represented that its participating provider agreements specifically permit each participating provider to independently negotiate its own contract directly with payers in the commercial market, including jointly negotiating with one or more subgroups of providers within the Staten Island PPS, or through an entirely separate provider network. This “non-exclusivity” will enable payers and patients to continue to benefit from a competitive environment in which the Staten Island PPS’s participating providers simultaneously collaborate on certain Medicaid based activities through the Staten Island PPS, while also competing with one another in the commercial market.

Second, the Department will engage in active state supervision of the Staten Island PPS, allowing the Department to confirm that the anticipated procompetitive benefits of the agreement covered by the COPA will continue to outweigh any potential anticompetitive effects. As part of its active state supervision, the Department will assess whether the Staten Island PPS is in compliance with the conditions attached to the COPA, and may impose further conditions as necessary to mitigate any potential anticompetitive effects that arise in connection with the PPS’s DSRIP activities.

Active state supervision will include, among other things, review of information provided by the Staten Island PPS in conjunction with its participation under DSRIP, particularly in relation to its progress in meeting project plan objectives. For example, the Staten Island PPS submits quarterly reports on its achievement of reporting milestones and/or performance targets for metrics for each of its 11 projects throughout the duration of the DSRIP program. Similarly, the PPS submits semi-annual reports on progress on each project, measured by project-specific milestones and metrics, as a precondition of payment under the DSRIP, which will be reviewed by the Department.

Active state supervision also will include review of the annual report of activities required under the COPA regulations. COPA recipients are required to file a report of activities on an annual basis for each year that the COPA is in effect or more frequently as requested by the Department. Such reports will include information such as price, cost and savings information, data concerning the utilization of services and quality of care, data related to progress meeting population health benchmarks, and analysis of progress meeting the expected benefits of the activities covered by the COPA.

The COPA regulations further authorize the Department to request additional information as necessary for purposes of conducting its active supervision of the agreement. Among other things, this is expected to include requests for information regarding the implementation of the Staten Island PPS internal monitoring, compliance programs, and Antitrust Compliance Policy, as described below.

Third, the likelihood of any adverse anticompetitive effects will be further mitigated through the imposition of conditions as part of a COPA issued to the Staten Island PPS, as authorized by 10 NYCRR § 83-2.6(c). In particular, such COPA will specify that it is granted exclusively for PPS Medicaid activities that are reasonably necessary to achieve the objectives of the PPS's DSRIP Project Plan, and that it confers no immunity on the PPS's conduct outside of the DSRIP Medicaid context. Further, such COPA will reflect that the Staten Island PPS has acknowledged and agreed that it shall not invoke the COPA or the antitrust immunity provided therewith for any purpose not reasonably necessary to Medicaid activities undertaken by the PPS for the achievement of the DSRIP objectives as set forth in the PPS's DSRIP Project Plan, including any activities engaged in by the PPS providers in the commercial market.

The COPA also will expressly set forth the PPS's acknowledgement that any material changes to the representations, documentation or information provided to the Department in connection with its COPA application or its DSRIP Project Plan and Medicaid activities reasonably necessary to achieve the objectives of the PPS Project Plan under DSRIP, may result in the imposition of additional conditions or other remedies under the applicable regulations, including revocation of the COPA.

Additionally, the COPA will state that it is conditioned upon the PPS's continued adherence to and compliance with all applicable requirements under PHL Article 29-F and 10 NYCRR Subpart 83-2, including but not limited to the submission of reports as required under Subpart 83-2 and the DSRIP program and as otherwise requested by the Department.

Such COPA and the immunity conferred therein will be valid only until the earliest of March 31, 2020, the termination of the Staten Island PPS's participation in the DSRIP program, the surrender of the COPA pursuant to 10 NYCRR § 83-2.14 (Voluntary Surrender), or the revocation of the COPA pursuant to 10 NYCRR § 83-2.12 (Revocation). Finally, the COPA will reflect that notwithstanding the specific conditions outlined therein, the Staten Island PPS remains subject to PHL Article 29-F, 10 NYCRR Subpart 83-2 and any other applicable law or regulation.

Fourth, as noted, the Staten Island PPS will implement an internal monitoring program, designed to support the PPS's ability to successfully implement its 11 DSRIP projects and achieve DSRIP's anticipated savings, benefits and other procompetitive efficiencies, while also guarding against any potential risk of anticompetitive effects. These activities are designed to allow the Staten Island PPS to monitor and analyze both individual participating provider and aggregate PPS performance, to detect potential barriers to successful performance, and to develop and implement performance improvement initiatives. These initiatives are tied closely to the quarterly milestones established under the DSRIP program for the organizational development of the Staten Island PPS and for each of the PPS's 11 projects – including those established for proposed targets associated with reducing aggregate health care costs, reducing unnecessary or sub-optimal hospital use, and expanding recruitment and retention of primary care and other needed health care professionals. The collected data will allow the PPS to assess patient outcomes metrics, provider/clinical performance metrics and financial metrics.

The PPS intends to conduct ongoing review and evaluation of its internal monitoring and implementation plan and will modify it as necessary to address any unanticipated challenges that may arise, advancing its efforts to accomplish the cost, quality and other procompetitive goals and objectives of DSRIP. As noted, the Department will review these efforts as part of its active state supervision.

Fifth, the Staten Island PPS has instituted a compliance program, which includes a Compliance Committee and Compliance Officer that each report to the Board. The Compliance Officer and the Compliance Committee are responsible for periodically conducting audits and checks for incident reporting and regulatory concerns, assessing compliance with applicable laws, regulations and policies, and periodically reporting to the Board the results of its activities. The management, employees and staff of the Staten Island PPS are provided with education and training in matters such as the PPS's commitment to compliance and the consequences of non-compliance, the PPS Code of Conduct, and its reporting standards and confidential reporting process.

In addition to its other compliance programs, the Staten Island PPS has adopted and shared with the Department its internal Antitrust Compliance Policy, which is designed to ensure that the participation of the participating providers only serves the procompetitive purpose of the Staten Island PPS. The Antitrust Compliance Policy imposes specific restrictions on the Staten Island PPS's and its providers' activities in order to minimize any potential for anticompetitive conduct, including: (a) limiting agendas to matters integral to the mission of the PPS; (b) restricting the distribution of data and information among participating providers to the minimum necessary for carrying out the Staten Island PPS's mission; (c) prohibiting improper coordination or collusion between or among the PPS and its participating providers; (d) prohibiting information sharing relating to competitively sensitive information or activities, such as those relating to the providers' business plans or third party payer contracting strategies, negotiations or other terms of doing business outside of the PPS; (e) prohibiting any restraints being placed on the activities of PPS providers outside the scope of PPS activities; and (f) prohibiting the Staten Island PPS from imposing contractual provisions upon participating providers, requiring that the Staten Island PPS receive the most favorable rate (as among other contracting entities including other PPSs or third party payers) for a particular service offered by that provider (a "most favored nations" provision).

In addition, the Staten Island PPS has committed to conduct antitrust training for Staten Island PPS executives, management and staff who deal with competitively sensitive information or activities, and impose reporting obligations with respect to potential federal and state antitrust violations. Violations of the policy are subject to disciplinary action, which may include suspension or termination of the rights of a Staten Island PPS partner to participate in the Staten Island PPS.

Conclusion

The Staten Island PPS is expected to bring a number of procompetitive benefits to the Medicaid population residing in Staten Island, which appear to outweigh potential anticompetitive effects. The collaborative agreement between these providers to serve the DSRIP objectives of the Staten Island PPS appears likely to achieve the anticipated procompetitive benefits and efficiencies and improve the quality, availability and efficiency of health care services being provided to the Medicaid population. Accordingly, the proposed COPA should be issued, subject to the conditions outlined above and subject to active state supervision provided by the Department.