



Department  
of Health

Office of  
Mental Health

Office of Alcoholism and  
Substance Abuse Services

March 9, 2015

CNY DSRIP Performing Provider System  
UNIVERSITY HSP SUNY HLTH SC  
Shawna Craigmile, LCSW, DSRIP Director  
750 East Adams Street  
Syracuse, NY 13210

Dear Ms. Craigmile:

The Department of Health (DOH), the Office of Mental Health (OMH), 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 University Hospital in its capacity as lead for the CNY DSRIP Performing Provider System under the Delivery System Reform Incentive Payment (DSRIP) Program.

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, DOH, 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 of 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 the CNY DSRIP Performing Provider System Project Plan application are addressed below.

#### **8.01 CNY 2.b.iii & 2.b.iv 10 NYCRR § 400.9**

Background and justification provided in your request:

This regulation imposes certain requirements with regard to transfer and affiliation agreements between hospitals and treatment and diagnostic centers, CHHAs, LHCA's and hospices. Compliance with this regulation would require that CNYCC develop a template transfer and affiliation agreement to be used by CNYCC providers. However, this would require that time and resources be dedicated to: 1) surveying providers to determine existing agreements as well as partnerships that are not currently governed by agreements, and 2) developing the template agreement. This alternative is time consuming and could result in delays in transferring patients to community providers. 2.b.iv: CNYCC intends to reduce 30-day readmissions in part by concentrating on referring patients to community-based providers such as CHHAs and hospices that are well-equipped to monitor and care for patients with chronic health conditions during the discharge process. The ability to facilitate transfers to providers who can closely monitor and support patients post-discharge is essential to the success of this project. CNYCC may be unable to ensure the execution of transfer and affiliation agreements that comply with all the requirements in 10 NYCRR § 400.9 between the participating EDs and every community care provider to which the EDs seek to transition patient care. This waiver will help to ensure that there are not any unnecessary roadblocks to transitioning patients from EDs to community primary care providers in connection with the below projects. CNYCC believes that policies and procedures governing the transition process will avoid any patient safety concerns. 2.b.iii: The goal of this project is to impact avoidable ED use by helping patients to access primary care and other community resources in CNYCC's service area. Among other things, CNYCC intends on establishing navigation teams in participating EDs. These teams shall assess patients identified as having utilized the ED for non-urgent services, and connect those users with primary care providers in the community. The ability of the navigation teams to transfer patients to community providers in a timely manner is essential to the success of this project. If CNYCC were required to ensure that all hospitals had an agreement that complies with the regulation in place before transferring a patient to another provider, this would thwart the implementation of the project.

Response to waiver request:

**Transfer and affiliation agreements. No waiver needed.** The PPS requested a waiver of 10 NYCRR § 400.9, which requires transfer and affiliation agreements between providers. The participation agreements in place with the PPS partners will be deemed to meet this requirement.

#### **8.02 CNY 10 NYCRR § 401.2(b)**

Background and justification provided in your request:

2.b.iv: 10 NYCRR § 401.2(b) states that an operating certificate shall be used only by the established operator for the designated site of operation. The goal of this project is to reduce 30-day readmissions for patients suffering from chronic health conditions. CNYCC has determined that across its service area, poor discharge planning is a barrier to preventing avoidable admissions. As a result, CNYCC will be establishing transition care teams to operate

within EDs in order to assess the post-discharge needs of patients and develop cross-setting plans of care that concentrate on collaboration between providers. One possible service that the transition teams may provide to discharged patients is home visits by practitioners, likely behavioral health nurse practitioners, to assist patients with compliance with discharge regimens. Compliance with 10 NYCRR § 401.2(b) would impede a medical facility's ability to provide home visits to patients identified as having a high risk of readmission.

Response to waiver request:

**Off-Site Services or Home Visits. Approved.** The PPS requested waivers of 10 NYCRR § 401.2(b) for the purpose of allowing practitioners affiliated with Article 28 providers to provide services outside of the certified service site. The request is approved, contingent upon notification by the PPS of the specific providers, practitioners and services. However, reimbursement for the provision of such services would not be available absent approval of a State Plan Amendment (SPA) to the State Medicaid Plan and associated state regulations, both of which are being pursued by DOH. DOH will explore, through Value-based Payment options, incorporating more flexibility for home visits, telemedicine and team visits.

### **8.03 CNY 2.a.i, 2.b.iii, 2.b.iv, 3.a.ii, 3.b.i 10 NYCRR § 405.1**

Background and justification provided in your request:

Any entity with the authority to operate a hospital must be approved for establishment by the Public Health Council (PHC). An entity will be deemed an operator if it has authority over: (i) adoption or approval of hospital operating policies and procedures or (ii) approval of hospital contracts for management or for clinical services. The below projects will likely require that CNYCC be able to create policies and/or approve contracts related to management or clinical services. 2.a.i: This project seeks to reduce avoidable hospital activity by shifting care to community-based providers. One of the metrics associated with this project is the development by CNYCC of care coordination protocols as well as integrated delivery system protocols and processes, which will likely apply to its participating hospitals. 2.b.iii: One of the key components of this project is the development of processes and procedures to establish connectivity between EDs and community primary care providers. In order to meet this project's requirements, CNYCC must have the ability to develop such processes and procedures to be implemented by its participating hospitals for the triage of patients that present to the ED for non-acute care. 2.b.iv: CNYCC intends to utilize ED transition teams to assess patients with chronic illnesses upon discharge from participating hospitals' EDs to determine their need for community provider support following discharge to reduce the likelihood of readmission. CNYCC intends to develop standardized processes and protocols to be used in all of its hospitals related to topics including, but not limited to, patient assessment, discharge planning and transition of care. 3.a.ii: One of the goals associated with this project is the development of procedures and protocols in to be used in EDs for diversion to crisis stabilization services when appropriate. 3.b.i: CNYCC will be developing standardized treatment protocols related to disease management to be implemented in its participating hospitals.

Response to waiver request:

**Administrative Services. No waiver needed.** The PPS requested waivers of 10 NYCRR §§ 405.1. No waiver is needed to the extent the PPS is performing administrative functions for purposes of administering PPS activities. However, if the PPS is performing functions described in 10 NYCRR § 405.1(c) and thus acts as the active parent of another entity, it will require establishment as set forth in § 405.1(c).

#### 8.04 CNY 2.a.i, 2.b.iii, 2.b.iv 10 NYCRR § 405.9(f)(7)

Background and justification provided in your request:

Pursuant to 10 NYCRR § 405.9(f)(7), hospitals are not to transfer, remove or discharge patients based on source of payment. However, many of CNYCC's projects seek to reduce avoidable hospital activity by Medicaid patients by shifting care of non-acute conditions to community providers. CNYCC will do this by assisting patients in accessing care outside of hospitals. CNYCC will in turn receive DSRIP funds related to its achievement of metrics aligned with these projects. CNYCC's promotion of increased utilization of primary care services will increase patient safety as these providers are better-equipped to monitor and coordinate care for patients. Additionally, Medicaid patients presenting to EDs will continue to be assessed to ensure they do not require emergency care before the appropriate personnel begin to concentrate on transferring them to community providers. CNYCC's ability to transfer patients from hospitals to other community providers could be impeded by the regulation in the following projects: 2.a.i: The goal of this project is to create an integrated delivery system that incorporates the full continuum of services for CNYCC's Medicaid population. CNYCC will be working to develop a structure that shifts focus from hospitals to community-based providers. In order to meet this goal, CNYCC may implement various components, such as procedures, processes and protocols that focus on shifting care and management of Medicaid beneficiaries that do not require urgent care from hospitals to community-based providers. 2.b.iii: Through this project, CNYCC will seek to reduce Medicaid patients' utilization of EDs for non-urgent services through the development of navigation teams to operate within EDs. These navigation teams will interview and assess Medicaid patients that utilize EDs for conditions that can be managed by primary care providers. The navigation teams will determine the full scope of patients' needs in order to transfer patients to appropriate community providers who can meet patients' ongoing care needs. 2.b.iv: Through this project CNYCC will seek to reduce 30-day readmissions among Medicaid patients by concentrating on the discharge process that hospitals are utilizing, and for patients with chronic conditions, focusing on identifying patients' needs post-discharge. Transition teams will be developing cross-setting plans of care that involve partnering with community providers with capacity to manage patients.

Response to waiver request:

**Admission, Transfer and Discharge. No waiver needed.** The PPS requested waivers of 10 NYCRR § 405.9(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.

#### 8.05 CNY 2.a.i 10 NYCRR § 710.1(c)(1)(i) & (c)(1)(ii) & (c)(1)(v)

Background and justification provided in your request:

The CON application process is a significant barrier to the level of integration that CNYCC seeks to achieve through its projects. The regulations governing the CON process require various levels of review and approval for projects related to the addition, modification or decertification of a licensed service, acquisition of equipment, conversion of beds and

construction of new facilities. The CON process is both complicated and time consuming, and could significantly delay achievement of goals associated with CNYCC's projects. The cited regulations require a CON application for the addition, modification or decertification of a licensed service; a change in the method of delivery of a licensed service, regardless of cost and a conversion of beds or a change in the certified bed capacity of a facility. Some or all of these changes may be necessary in connection with Project 2.a.i as CNYCC seeks to transform the current fragmented care delivery system into one that is integrated and efficiently provides care to Medicaid patients. For instance, CNYCC may seek to convert beds in existing facilities that are not currently utilized or to add licensed services that address a gap in access to care.

Response to waiver request:

**Bed Capacity. Approved.** The PPS requested waivers of 10 NYCRR §§ 710 and 401(e), pertaining to the CON process for changes in bed capacity. These requests are approved, provided that submission of information through NYSE-CON is necessary for decreases in bed capacity and administrative review necessary for increases in bed capacity. DOH will expedite all DSRIP projects.

#### **8.06 CNY 2.a.i 10 NYCRR § 710.2**

Background and justification provided in your request:

The CON application process is a significant barrier to the level of integration that CNYCC seeks to achieve through its projects. The regulations governing the CON process require various levels of review and approval for projects related to the addition, modification or decertification of a licensed service, acquisition of equipment, conversion of beds and construction of new facilities. The CON process is both complicated and time consuming, and could significantly delay achievement of goals associated with CNYCC's projects. For instance, in connection with Project 2.a.i, CNYCC anticipates the need to construct a new state-of-the-art facility in its service area through the affiliation of two existing medical centers. This integration will result in significant clinical, operational, and financial efficiencies not currently afforded by the current fragmented delivery system spread across three aged campuses.

Response to waiver request:

**Public Need and Financial Feasibility. Approved.** The PPS requested a waivers of 10 NYCRR §§ 710.2, with respect to the public need and financial feasibility components of the CON process for the construction part of the request. This waiver is approved. However:

- No waiver is available for establishment applications as they pertain to the affiliation of two medical centers.
- Only the public need and financial feasibility component of the CON process is waived, meaning that a construction application still needs to be filed through NYSE-CON and provider compliance will still be reviewed.
- No waiver is available for specialized services, CHHA service area expansions, and hospital and NH bed increases, which will be determined on a case-by-case basis.

#### **8.07 CNY 10 NYCRR § 717.4**

Background and justification provided in your request: 2.b.iv:

This regulation states that hospice residences may not be located in an Article 28 facility. The goal of this project is to reduce 30-day readmissions, many of which stem from patients who return to hospitals for pain management. CNYCC has determined that there is a lack of necessary resources and facilities to care for these patients in parts of CNYCC's service area. As a result, this regulation is a barrier to increasing access to hospice care for CNYCC's Medicaid population. A waiver of this regulation to allow the establishment of hospice residences in Article 28 facilities would fill a large gap that currently exists in the continuum of care. Greater access to these services would result in better care and a higher quality of life for the effected Medicaid population. It would also cause a reduction in 30-day readmissions related to pain management, and ED visits generally.

Response to waiver request:

**Determination pending.**

### **8.08 CNY 2.a.i 10 NYCRR 401.3**

Background and justification provided in your request:

This regulation requires that proposed changes in physical plant, bed capacity and the extent and kind of services provided in existing medical facilities be submitted to the DOH for approval. The CON process is both complicated and time consuming, and could significantly delay achievement of goals associated with CNYCC's projects. 2.a.i: Requires the creation of an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. CNYCC anticipates needing to make these kinds of changes to existing facilities in order to increase efficiency in care and shift to more integrated care models. For instance, CNYCC may seek to convert beds in existing facilities that are not currently utilized or to add licensed services that address a gap in access to care. CNYCC also anticipates the need to reduce inpatient beds and expand ambulatory care services provided in certain existing providers in connection with this project. As a result, CNYCC requests that the CON process be waived for existing providers that seek to make changes to in physical plant, bed capacity and the extent and kind of services.

Response to waiver request:

**Bed Capacity. Approved.** The PPS requested waivers of 10 NYCRR §§ 401, pertaining to the CON process for changes in bed capacity. This request is approved, provided that submission of information through NYSE-CON is necessary for decreases in bed capacity and administrative review necessary for increases in bed capacity. DOH will expedite all DSRIP projects.

### **8.09 CNY 10 NYCRR 600.1(b)(1) & (b)(3), 600.2(b)(1) & (b)(3)**

Background and justification provided in your request:

This regulation sets forth the information to be contained within any application to the Public Health Council for the establishment of a new medical facility. 2.a.i: Requires the creation of an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. In connection with this project, CNYCC anticipates the construction of a new state-of-the-art facility in its service area through the affiliation of two existing medical centers, which will result in significant clinical, operational, and financial efficiencies not currently

afforded by the current fragmented delivery system spread across three aged campuses. In addition to reducing costs, strengthening core clinical services and introducing new clinical initiatives, the construction of such new facility will measurably increase access to and quality of healthcare for the community being served by CNYCC. This new medical facility will have enhanced clinical and programmatic collaborations with other providers in the CNYCC PPS, resulting in a more tightly aligned integrated delivery system. This project has the ability to substantially impact the health status of the population and better manage service utilization and the overall cost of healthcare. Thus, CNYCC requests waiver of subsections 600.1(b)(1) and (b)(3), and 600.2(b)(1) and (b)(3) as similar reviews will be performed in connection with CNYCC's DSRIP application. Denial of this waiver request would significantly delay the construction process, and affect the speed at which CNYCC will be able to achieve the metrics associated with this project. Denial of the waiver would impede the closure of existing gaps in the care continuum, and result in the continuance of inefficient care as the existing medical facilities do not have the systems in place to triage ED patients or redirect them to urgent care, primary care, and/or behavioral health in lieu of ED usage.

Response to waiver request:

**Need and Financial feasibility for an establishment CON. Denied.** The PPS requested waivers of §§ 600.1(b)(1) and (b)(3), and §§ 600.2(b)(1) and (b)(3). No waiver is available for establishment applications, however all DSRIP projects will be expedited.

#### **8.10 CNY 10 NYCRR 670.1**

Background and justification provided in your request: 2.a.i: This regulation sets forth the factors for determining the public need for the establishment of a new medical facility. 2.a.i: Requires the creation of an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. In connection with this project, CNYCC anticipates the construction of a new state-of-the-art facility in its service area through the affiliation of two existing medical centers, which integration will result in significant clinical, operational, and financial efficiencies not currently afforded by the current fragmented delivery system spread across three aged campuses. In addition to reducing costs, strengthening core clinical services and introducing new clinical initiatives, the construction of such new facility will measurably increase access to and quality of healthcare for the community being served by CNYCC. CNYCC requests a waiver of the public need portion of the application process as a similar review will be performed in connection with CNYCC's DSRIP project plan application, negating the need for a separate public need analysis.

Response to waiver request:

**Public Need and Financial Feasibility. Approved.** The PPS requested a waiver of 10 NYCRR §§ 670.1, with respect to the public need and financial feasibility components of the CON process. A waiver is approved, however, that:

- No waiver is available for establishment applications.
- Only the public need and financial feasibility components of the CON process are waived, meaning that a construction application still needs to be filed through NYSE-CON and provider compliance will still be reviewed.
- No waiver is available for specialized services, CHHA service area expansions, and hospital and NH bed increases, which will be determined on a case-by-case basis.

## 8.11 CNY 10 NYCRR 709

Background and justification provided in your request: 2.a.i: This regulation, and its individual sections set forth the factors for determining the public need for the establishment of new medical facilities. 2.a.i: Requires the creation of an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. In connection with this project, CNYCC anticipates that it will need to construct a new hospital in its service area in order to meet the medical needs of its Medicaid population. In addition to reducing costs, strengthening core clinical services and introducing new clinical initiatives, the construction of such new facility will measurably increase access to and quality of healthcare for the community being served by CNYCC. CNYCC requests a waiver of the public need portion of the application process as a similar review will be performed in connection with CNYCC's DSRIP application, negating the need for a separate public need analysis.

Response to waiver request:

**Public Need and Financial Feasibility. Approved.** The PPS requested a waiver of 10 NYCRR §§ 709, with respect to the public need and financial feasibility components of the CON process. Waivers are approved, however, that:

- No waiver is available for establishment applications.
- Only the public need and financial feasibility components of the CON process are waived, meaning that a construction application still needs to be filed through NYSE-CON and provider compliance will still be reviewed.
- No waiver is available for specialized services, CHHA service area expansions, and hospital and NH bed increases, which will be determined on a case-by-case basis.

## 8.12 CNY 2.a.i 10 NYCRR 710.9

Background and justification provided in your request:

2.a.i: This regulation requires both an onsite inspection following construction of a new medical facility and a preopening survey prior to occupation of the premises. Both of these processes are time consuming, and the statute fails to impose a time limit in which these must be done. As a result, they are a barrier to the opening of new medical facilities in connection with DSRIP projects. 2.a.i: Requires the creation of an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. In connection with this project, CNYCC anticipates the construction of a new state-of-the-art facility in its service area through the affiliation of two existing medical centers, which integration will result in significant clinical, operational, and financial efficiencies not currently afforded by the current fragmented delivery system spread across three aged campuses. In addition to reducing costs, strengthening core clinical services and introducing new clinical initiatives, the construction of such new facility will measurably increase access to and quality of healthcare for the community being served by CNYCC. CNYCC requests a waiver of the pre-opening survey requirements set forth in this regulation. There is currently no timeframe associated with such requirement, and this process will be a barrier to the timely opening of any new medical facilities constructed by CNYCC.

Response to waiver request:

**Pre-Opening Surveys. Denied.** The PPS requested waivers of 10 NYCRR § 710.9, pertaining to CON pre-opening surveys. These requests are denied, as pre-opening surveys pertain to patient safety. However, DOH will expedite pre-opening surveys connected with DSRIP projects to the extent possible.

### **8.13 CNY 2.a.i, 3.a.i 14 NYCRR § 551.6**

Background and justification provided in your request:

This regulation governs the prior approval review process associated with mental health services projects. There are varying levels of OMH approval based on the scope of the proposed project. For instance, the E-Z PAR review described in § 551.6(c) applies to outpatient program projects submitted by current operators of OMH licensed programs that propose to establish a new outpatient program or satellite office, expand caseload by more than 25 percent, make a substantial change to services provided or undertake a capital project costing under \$600,000 and above \$250,000. These approval processes are time consuming and will impede CNYCC's ability to integrate services in a timely manner. The following projects are impeded by this regulation: 2.a.i: The goal of this project is to create an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. This project, seeks to shift unnecessary hospital care to community-based providers. As a result, CNYCC anticipates greater utilization of these community based providers, which will in turn require that mental health providers have greater capacity to treat the service area's Medicaid population. Community mental health providers will likely need to add licensed services, add beds and/or expand to additional sites in order to meet the increased need for services. If CNYCC were required to follow the prior approval processes outlined in this regulation it would significantly impede its integration of services, and its ability to meet the increased needs for community based services. 3.a.i: The goal of this project is to integrate mental health, substance abuse, and medical services so that patients are able to receive care for all conditions in one place. CNYCC will likely seek to place substance use disorder professionals and primary care specialists in existing outpatient mental health facilities that have not previously offered such services. This integration and co-location of services will increase the services provided at such facilities and may also result in a need for expansion of existing facilities or the addition of new locations as facilities see greater utilization by patients. The regulation requires approval by OMH prior to implementation of these types of projects. Compliance with the regulation will slow down CNYCC's integration of services, which will in turn thwart CNYCC's efforts to fill gaps in access to care by coordinating care in one location.

Response to waiver request:

**Integrated services.** Approved solely with respect to 14 NYCRR 599.4(r) and (ab), which will be waived contingent upon following the DSRIP Project 3.a.i Licensure Threshold Model outlined in Appendix A to this letter. DOH, OMH and OASAS have determined that no additional waivers are needed if providers are integrating services under such model. As noted in Appendix A, the use of this model is contingent upon:

- submission of an application by the PPS with the identification all providers involved in such model;
- the verification of the good standing of such providers by DOH, OMH and OASAS, as appropriate;
- satisfaction of the physical plant standards as delineated in Appendix A.

If a PPS later identifies the need for a waiver, a request can be made at that time.

**8.14 CNY 2.a.i, 3.a.i: 14 NYCRR § 599.3(d), 599.4(r) & (ab), 599.5(f) and 599.12**

Background and justification provided in your request:

The cited regulations require licensure by DOH of mental health providers if the provision of medical services exceeds a certain percentage of total annual visits, licensure by OMH of certain Article 28 providers that provide mental health visits, prior approval for changes to existing operating certificates and the submission of a plan to be approved by OMH prior to sharing program space with other programs. These regulations are barriers to integrated care as they require providers to go through lengthy licensing and approval processes. The waiver is needed to make it easier for CNYCC to add services in existing provider locations and adjust premises accordingly without undue delay. 3.a.i: The goal of this project is to integrate behavioral health and primary care services so that patients can receive care for all conditions in one place. In order to achieve this integration, CNYCC intends to place behavioral health providers in primary care settings, and vice versa. This expansion of services requires licensure by OMH and DOH under the cited regulations. The process for applying for licensure or certification from these agencies is time consuming, and would impede CNYCC's ability to integrate services.

Response to waiver request:

**Integrated services.** Approved solely with respect to 14 NYCRR 599.4(r) and (ab), which will be waived contingent upon following the DSRIP Project 3.a.i Licensure Threshold Model outlined in Appendix A to this letter. DOH, OMH and OASAS have determined that no additional waivers are needed if providers are integrating services under such model. As noted in Appendix A, the use of this model is contingent upon:

- submission of an application by the PPS with the identification all providers involved in such model;
- the verification of the good standing of such providers by DOH, OMH and OASAS, as appropriate;
- satisfaction of the physical plant standards as delineated in Appendix A.

If a PPS later identifies the need for a waiver, a request can be made at that time.

**8.15 CNY 2.a.i, 3.a.i 14 NYCRR § 810.6**

Background and justification provided in your request:

This regulation requires administrative review prior to a substance use disorder provider establishing a new service, expanding to an additional location or increasing the capacity of a service. All of these actions may need to be taken in connection with the below projects, which emphasize integration of services in community providers. The administrative review process is time consuming, and will thwart CNYCC's ability to efficiently implement its projects. 2.a.i: The goal of this project is to create an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. This project seeks to shift unnecessary hospital care to community-based providers. As a result, CNYCC anticipates greater utilization of these community based providers, which will in turn require that these

providers have greater capacity to treat the service area's Medicaid population. Community substance use disorder providers licensed by OASAS will likely need to add licensed services and expand to additional sites in order to meet the increased need for services. 3.a.i: The goal of this project is to integrate mental health, substance abuse, and medical services so that patients are able to receive care for all conditions in one place. CNYCC will likely seek to place mental health professionals and primary care specialists in existing outpatient substance use disorder facilities that have not previously offered such services. This integration and co-location of services will increase the services provided at such facilities and may also result in a need for expansion of existing facilities or the addition of new locations as facilities see greater utilization by patients.

Response to waiver request:

**Integrated services.** Approved solely with respect to 14 NYCRR 599.4(r) and (ab), which will be waived contingent upon following the DSRIP Project 3.a.i Licensure Threshold Model outlined in Appendix A to this letter. DOH, OMH and OASAS have determined that no additional waivers are needed if providers are integrating services under such model. As noted in Appendix A, the use of this model is contingent upon:

- submission of an application by the PPS with the identification all providers involved in such model;
- the verification of the good standing of such providers by DOH, OMH and OASAS, as appropriate;
- satisfaction of the physical plant standards as delineated in Appendix A.

If a PPS later identifies the need for a waiver, a request can be made at that time.

#### **8.16 CNY 2.a.i, 3.a.i: 14 NYCRR § 822-4.9**

Background and justification provided in your request:

14 NYCRR § 822-4.9 provides that an outpatient chemical dependence service provider must complete an application for approval of an additional location. The below projects seek to increase utilization of community providers through the co-location of services. This may result in the need for additional locations to account for new services provided and higher utilization as a result of greater coordination between CNYCC providers. This regulation presents a barrier to the successful implementation of the projects as the application process for an additional location is a time consuming process. As a result, a denial of this waiver will thwart CNYCC's efforts to fill gaps in access to care by coordinating care in one location. 2.a.i: The goal of this project is to create an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. In order to reach this goal, CNYCC intends to expand the integrated care models currently being utilized by the three participating Health Homes. CNYCC may seek to place medical and mental health specialists in existing outpatient chemical dependency or opioid treatment programs so that patients are able to have access to many types of care in one location. Co-location of services may result in possible expansion of existing chemical dependence programs to account for new services provided and higher utilization as a result of greater coordination between CNYCC providers. 3.a.i: The goal of this project is to integrate mental health, substance abuse, and medical services so that patients are able to receive care for all conditions in one place. In implementing this project CNYCC will likely seek to place mental health and primary care specialists in existing outpatient chemical dependence and opioid treatment programs that have not previously offered such services. This

integration and co-location of services may result in the need for additional locations as facilities see greater utilization by patients.

Response to waiver request:

**Integrated services.** Approved solely with respect to 14 NYCRR 599.4(r) and (ab), which will be waived contingent upon following the DSRIP Project 3.a.i Licensure Threshold Model outlined in Appendix A to this letter. DOH, OMH and OASAS have determined that no additional waivers are needed if providers are integrating services under such model. As noted in Appendix A, the use of this model is contingent upon:

- submission of an application by the PPS with the identification all providers involved in such model;
- the verification of the good standing of such providers by DOH, OMH and OASAS, as appropriate;
- satisfaction of the physical plant standards as delineated in Appendix A.

If a PPS later identifies the need for a waiver, a request can be made at that time.

**8.17 CNY 2.a.i, 3.a.i: 14 NYCRR §§ 587.5(h), 587.8(h), 587.9(h), 587.10(h), 587.11(h) and 587.12(h) and 587.15**

Background and justification provided in your request:

These regulations apply to outpatient programs providing services to children and adults diagnosed with mental illnesses and contain numerous requirements that could operate as barriers to the integration and co-location of mental health, substance abuse and primary care services. Specifically, § 587.5(h) requires OMH approval of changes to physical space or location, use of additional sites, and change in capacity of a mental health provider; §§ 587.8(h) - 587.12(h) require OMH approval for the provision of services not set forth therein and § 587.15 sets forth staffing requirements. These approval processes are significant impediments to the co-location and integration of services as they are often time consuming and constrictive. 2.a.i: The goal of this project is to create an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population and reduce unnecessary acute care by promoting service integration activities in community providers. This will involve the co-location of medical and behavioral health services in community providers. Co-location of services will likely result in: 1) the addition of new services to existing outpatient programs; 2) expansion and physical changes to existing outpatient programs to account for new services and higher utilization, and 3) changes in staffing. 3.a.i: The goal of this project is to integrate mental health, substance abuse, and medical services so that patients are able to receive care for all conditions in one place. CNYCC intends to place primary care and substance abuse specialists in existing outpatient mental health programs that have not previously offered such services and/or expand those services where appropriate. Compliance with the cited regulations will impede CNYCC's ability to implement this project as integration and co-location will likely result in: 1) the addition of new services to existing outpatient programs; 2) expansion and physical changes to existing outpatient programs to account for new services and higher utilization, and 3) changes in staffing.

**Requests a waiver of 14 NYCRR 587.5(h) (certification of outpatient programs), 587.8(h) (clinic treatment for adults), 587.9(h) (clinic treatment for children), 587.10(h) (continuing day treatment programs), 587.11(h) (day treatment programs for children), 587.12(h)**

**(partial hospitalization programs) and 587.15 (staffing)**, to promote the integration and/or co-location of physical and behavioral health services.

Response to waiver request:

**More information needed by OMH.** While OMH can support for clinic sites pursuant to the Licensure Threshold Model outlined in Appendix A, clarity is needed relative to the types of services the project seeks to provide in the other identified licensed settings. Please email Keith McCarthy of OMH with such information at [Keith.McCarthy@omh.ny.gov](mailto:Keith.McCarthy@omh.ny.gov).

**Integrated services.** Approved solely with respect to 14 NYCRR 599.4(r) and (ab), which will be waived contingent upon following the DSRIP Project 3.a.i Licensure Threshold Model outlined in Appendix A to this letter. DOH, OMH and OASAS have determined that no additional waivers are needed if providers are integrating services under such model. As noted in Appendix A, the use of this model is contingent upon:

- submission of an application by the PPS with the identification all providers involved in such model;
- the verification of the good standing of such providers by DOH, OMH and OASAS, as appropriate;
- satisfaction of the physical plant standards as delineated in Appendix A.

If a PPS later identifies the need for a waiver, a request can be made at that time.

#### **8.18 CNY 14 NYCRR §§ 590.5(d)(6), 590.7(b)(1), 590.7(b)(9) and 590.9(c)**

Background and justification provided in your request: 3.a.ii: CNYCC will be utilizing the services currently offered by the Comprehensive Psychiatric Emergency Program (CPEP) at St. Joseph's hospital to meet the goals of this project. Specifically, CNYCC currently intends to expand the geographic scope of the mobile crisis team component of the existing CPEP so that it can provide crisis stabilization services throughout the service area of CNYCC. In order to do this, CNYCC intends to locate additional mobile crisis teams in EDs of other participating hospitals. In addition, CNYCC would like to increase the number of extended observation beds currently associated with St. Joseph's CPEP in order to provide stabilization services to more patients being discharged from the CPEP. The cited regulations could serve as barriers to these plans. Section 590.5(d)(6) requires that a CPEP obtain the prior approval of OMH to utilize additional physical locations or initiate changes in the services provided to the program. To the extent these regulations would impede mobile crisis teams associated with the CPEP from utilizing additional locations and providing services in a wider service area, CNYCC requests that it be waived. Section 590.7(b)(1) requires a description of the program's catchment area. CNYCC requests a waiver of 590.7(b)(1) to the extent it requires that St. Joseph's amend its emergency services plan to expand its catchment area to the entire service area of CNYCC. 590.7(b)(9) states that CPEPs are prohibited from operating more than six extended observation beds. The EOBs provide patients with a safe environment where they can continue to be observed and treated by psychiatric professionals. An expansion of access to these beds would ensure that individuals experiencing psychiatric emergencies receive the stabilization services they need before being discharged, and would increase the safety of the patient and others in the community. Thus, CNYCC requests a waiver of 590.7(b)(9) so that it may expand the number of extended observation beds. Section 590.9(c) requires OMH approval of staffing plans associated with crisis outreach services. In order to establish mobile crisis outreach teams

in all of the counties serviced by CNYCC where these services do not currently exist, increased staff will be necessary. CNYCC requests waiver of this provision to the extent it would require it to obtain OMH approval of any revised staffing plan that may need to be created in connection with the addition of mobile crisis teams contemplated by this project.

**Requests a waiver of 14 NYCRR 590.5(d)(6) (prior approval for changes in service), 590.7(b)(1) (description of catchment area), 590.7(b)(9) (EOB limitation) and 590.9(c)** (crisis outreach staffing plans), to “utilize the services currently offered by the Comprehensive Psychiatric Emergency Program (CPEP) at St. Joseph's hospital ... to expand the geographic scope of the mobile crisis team component of the existing CPEP so that it can provide crisis stabilization services throughout the service area of CNYCC. In order to do this, CNYCC intends to locate additional mobile crisis teams in EDs of other participating hospitals. In addition, CNYCC would like to increase the number of extended observation beds currently associated with St. Joseph's CPEP in order to provide stabilization services to more patients being discharged from the CPEP.”

Response to waiver request:

**More information needed by OMH.** CPEP extended observation beds are acute care services, typically reimbursed at the same per diem rate as an inpatient bed. Expanding this capacity does not appear consistent with the DSRIP aim of decreasing reliance on the most acute services. Rather, OMH would recommend consideration for expansion/implementation of new intensive crisis services. OMH would consider support for an increase in short-term CPEP beds, if that were to enable a decrease in longer stay admissions. Please email Keith McCarthy of OMH with such information at [Keith.McCarthy@omh.ny.gov](mailto:Keith.McCarthy@omh.ny.gov).

#### **8.19 CNY 2.a.i, 3.a.i 14 NYCRR §§ 814.2, 814.3(d), 814.6, 814.7, and 814.8**

Background and justification provided in your request:

The regulations cover 1) building code requirements applicable to OASAS providers; 2) general building requirements applicable to OASAS providers; 3) additional requirements for outpatient facilities; 4) requirements related to shared space; and 5) written approval from OASAS for changes to physical space. These regulations are barriers to the integration of mental health, substance abuse and primary care services, as they restrict providers' ability to share space and alter physical premises used for chemical dependence services and impose a lengthy approval process. Integration of these services is a key component of the below projects. 2.a.i: This project seeks to reduce unnecessary acute care by promoting service integration activities in community providers. This will involve the co-location of medical and behavioral health services in community providers in order to effectively address patient's health needs in a holistic manner. Co-location of services will result in: 1) the addition of new services to existing chemical dependence programs, and 2) alterations of existing physical space and possible expansion of chemical dependence programs to account for new services provided and higher utilization as a result of greater coordination between CNYCC providers. 3.a.i: The goal of this project is to integrate behavioral health and medical services so that patients are able to receive care for all conditions in one place. CNYCC intends to place primary care and mental health specialists in existing chemical dependence programs that have not previously offered such services and/or expand those services where appropriate. Compliance with the regulation will impede CNYCC's ability to integrate and co-locate medical and behavioral health services in community providers in order to effectively address patient's health needs in a holistic manner. For instance, co-location will result in: 1) the addition of new services to existing outpatient

programs and 2) alterations of existing physical space and possible expansion of existing chemical dependence programs to account for new services provided and higher utilization as a result of greater coordination between CNYCC providers.

Response to waiver request:

**Integrated services.** Approved solely with respect to 14 NYCRR 599.4(r) and (ab), which will be waived contingent upon following the DSRIP Project 3.a.i Licensure Threshold Model outlined in Appendix A to this letter. DOH, OMH and OASAS have determined that no additional waivers are needed if providers are integrating services under such model. As noted in Appendix A, the use of this model is contingent upon:

- submission of an application by the PPS with the identification all providers involved in such model;
- the verification of the good standing of such providers by DOH, OMH and OASAS, as appropriate;
- satisfaction of the physical plant standards as delineated in Appendix A.

If a PPS later identifies the need for a waiver, a request can be made at that time.

## 8.20 CNY

Background and justification provided in your request:

2.a.i, 2.b.iii: Currently, Medicaid patients cannot be members of both a Health Home and a Managed Long Term Care Plan. The rate of patients with poor mental health is considerably higher in CNYCC's service area than the state average, and much of the ED and hospital utilization for the Medicaid population is by patients with psychiatric diagnoses. The fact that Medicaid patients cannot simultaneously be members of Health Homes and MLTCs creates a barrier to the provision of more integrated care that focuses on the needs of patients. Health Home care management is behavioral health focused, while MLTC care is more concentrated on patients' physical health. MLTCs in CNYCC's service area are lacking in behavioral health expertise. 2.a.i: The goal of this project is to create an integrated delivery structure that incorporates the full continuum of services for CNYCC's Medicaid population. CNYCC intends to expand the integrated care models currently being utilized by the three participating Health Homes in order to transform the current care delivery system. An expansion of Health Home services to patients that are members of MLTCs will bring mental health care coordination services to a greater portion of CNYCC's Medicaid population, and will fill a gap in MLTC care. This will also reduce the amount of unnecessary hospital visits. Thus, waiver of this policy is necessary to provide more integrated care to the Medicaid population and will assist CNYCC in meeting its goal of shifting care from hospitals to community providers. 2.b.iii: This project will impact avoidable ED use by helping patients to access primary care and other community resources. CNYCC intends to establish navigation teams in participating EDs. This team shall assess patients who are identified as having utilized the ED for non-urgent services, and connect those users with primary care providers in the community. Allowing patients to be members of both Health Homes and MLTCs will give these navigation teams additional resources in the community for patients with mental health conditions.

Response to waiver request:

**Patient member of both Health Home and MLTC. Denied.** Federal requirements prohibit 2 case management services at the same time.

## 8.21 CNY 2.a.i, 2.b.iv: 2.a.i:

Background and justification provided in your request:

Hospice programs are an essential piece of the integrated delivery system project as they promote the delivery of coordinated and patient-centered care. Expanding access to hospice care for CNYCC's Medicaid population would result in better care for patients, and assist CNYCC in meeting its goal of shifting patient care from hospitals to community providers as hospices are well-equipped to treat the range of symptoms and complications patients with chronic illnesses face. There are no patient safety risks to this waiver. Increasing access for Medicaid beneficiaries to hospice services will lead to an increase in patient safety as more individuals will be receiving the integrated care that is necessary in connection with chronic illnesses. 2.b.iv: CNYCC intends to reduce 30-day readmissions in part by concentrating on referring patients to community-based providers such as hospices that are well-equipped to monitor and care for patients with chronic health conditions following discharge from the hospitals. The ability to facilitate transfers to providers who can closely monitor and support patients post-discharge is essential to the success of this project. Increasing access to hospice services by broadening the definition of a terminal prognosis to a 12-month life expectancy will result in a decrease in the number of re-admissions CNYCC hospitals see related to pain and other symptoms of chronic illness that could be managed in the hospice setting.

Response to waiver request:

**Hospice expansion. Determination pending.**

## 8.22 CNY 2.a.i, 2.b.iv:

Background and justification provided in your request:

Currently hospices are not able to contract to provide or to provide palliative care services, and bill Medicaid for such services. 2.a.i: Palliative care is an essential piece of the integrated delivery system project. Expanding access to palliative care for CNYCC's Medicaid population would result in better care for patients, and assist CNYCC in meeting its goal of shifting patient care from hospitals to community providers, as currently many hospital admissions are related to the need for pain management. Providing a mechanism for hospice to bill for palliative care will help them to be better-equipped to treat the range of symptoms and complications patients with chronic illnesses face. There are no patient safety risks to this waiver. Increasing access for Medicaid beneficiaries to palliative care will lead to an increase in patient safety as more individuals will be receiving the integrated care that is necessary in connection with chronic illnesses. 2.b.iv: CNYCC intends to reduce 30-day readmissions in part by concentrating on referring patients to community-based providers such as hospices that are well-equipped to monitor and care for patients with chronic health conditions following discharge from the hospitals. The ability to facilitate transfers to providers who can closely monitor and support patients post-discharge is essential to the success of this project. Increasing access to palliative care services will result in a decrease in the number of re-admissions CNYCC hospitals see related to pain and other symptoms of chronic illness that could be managed in the hospice setting.

Response to waiver request:

**Hospice & Palliative care. No waiver needed.**

## 8.23 CNY

Background and justification provided in your request: Section 2802-a of the PHL defines transitional care units as sub-acute care services provided to patients of a general hospital who no longer require acute care general hospital inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet appropriate for discharge. Stays are limited in duration and designed to resolve a patient's sub acute care medical problems and result in the timely and appropriate discharge of such a patient to a home, residential health care facility or other appropriate setting. . 2.a.i: One goal of this project is to create an integrated, collaborative and accountable service delivery structure that eliminates fragmentation and concentrates on delivering high quality care in the right setting. CNYCC has determined that there is an absence of sufficient post-discharge services for patients who require continued care post-discharge in a nursing home or other appropriate setting. Allowing Medicaid patients to access care in TCUs will ensure that they are receiving the care they need and ultimately result in reduced lengths of stay. 2.b.iv: The goal of this project is to reduce 30-day readmissions. Receipt by Medicaid patients of care in TCUs will ensure that they are not discharged from hospitals in situation where they could benefit from the specialized medical, nursing and other ancillary services hospitals can provide. This in turn will reduce readmissions, and result in more collaborative relationships between hospitals and long term care providers in the community, which will help bring about more efficient allocation of patients between the two settings.

Response to waiver request:  
TCUs. No waiver needed.

## 8.24 CNY 2.a.i, 2.b.iii, 2.b.iv 18 NYCRR § 505.10

Background and justification provided in your request:  
This regulation requires that prior authorization for non-emergency transportation services be granted prior to transportation expenses being incurred. In CNYCC's service area, DOH has contracted with Medical Answering Services (MAS) to service as the transportation manager and prior authorization official. Transportation is a significant problem in CNYCC's service area. In many areas the distance to providers impedes access to regular preventative and primary care. As a result, any actions that can be taken to facilitate more rapid transfers to care facilities would result in more efficient care for CNYCC's Medicaid population. CNYCC has identified the dispatching practices of MAS to be barriers to accessing care for Medicaid patients. Patients are often dropped off for appointments late or are made to sustain long car rides. Thus, CNYCC requests that: 1) its participating providers be enabled to request non-emergency transportation directly from individual transportation vendors, and 2) individual transportation vendors be authorized to generate prior authorizations. CNYCC believes that there will be greater utilization of community based providers if these waivers are granted. 2.a.i: One goal of this project is to create an integrated, collaborative and accountable service delivery structure that eliminates fragmentation and concentrates on delivering high quality care in the right setting. Waiver of the regulation would make utilization of nonemergency transportation services easier for Medicaid beneficiaries and will lead to a more integrated and accessible care

delivery system. 2.b.iii: The goal of this project is to impact avoidable ED use by helping patients access primary care and other community resources in CNYCC's service area. Waiver of the regulation would make utilization of nonemergency transportation services easier for Medicaid beneficiaries. This effects this project in two ways: 1) navigation teams will have a greater ability to connect frequent ED users to community providers, and 2) patients will have an easier time accessing care through community care providers. 2.b.iv: The goal of this project is to reduce 30-day readmissions. The patient population that is the target of this project includes patients that have diagnoses such as cardiac, renal and behavioral health disorders who are at a high risk of readmission. These patients will continue to need care post-discharge, and ED transition teams will be concentrating on referring patients to appropriate community providers with capacity to see patients in a timely manner. Waiver of the regulation will make utilization of nonemergency transportation services easier for Medicaid beneficiaries, resulting in fewer 30-day readmissions.

Response to waiver request:

**Waiver for transportation prior authorization. Denied** as it could jeopardize the strict financial and programmatic controls in place by the State through its contracted transportation manager.

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 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,

A handwritten signature in black ink that reads "Howard Zucker M.D." in a cursive style.

Howard A. Zucker, M.D., J.D.  
Acting 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  
And Substance Abuse Services