



Department  
of Health

Office of  
Mental Health

Office of Alcoholism and  
Substance Abuse Services

December 15, 2015

Alliance for Better Health Care PPS  
David Smingler, DSRIP Director  
Ellis Hospital  
1101 Nott Street  
Schenectady, New York 12308

Dear Mr. Smingler:

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

Pursuant to Public Health Law (PHL) 2807(20)(e) and (21)(e), and in connection with DSRIP Project Plans and projects under the Capital Restructuring Financing Program, which are associated with DSRIP projects, the Department, OMH, and OASAS may waive regulations for the purpose of allowing applicants to avoid duplication of requirements and to allow the efficient implementation of the proposed projects. However, the agencies may not waive regulations pertaining to patient safety nor waive regulations if such waiver would risk patient safety. Further, any waivers approved under this authority may not exceed the life of the project or such shorter time periods as the authorizing commissioner may determine.

Accordingly, any regulatory waivers approved herein are for projects and activities as described in the Project Plan application and any implementation activities reasonably associated therewith. Such regulatory waivers may no longer apply should there be any changes in the nature of a project. It is the responsibility of the PPS and the providers that have received waivers to notify the relevant agency when they become aware of any material change in the specified project that goes beyond the scope for which the waiver was granted. Further, any regulatory waivers approved are only for the duration of the projects for which they were requested.

The approval of regulatory waivers are contingent upon the satisfaction of certain conditions. In all cases, providers must be in good standing with the relevant agency or agencies. Other conditions may be applicable, as set forth in greater detail below. The failure to satisfy any such conditions may result in the withdrawal of the approval, meaning that the providers will be required to maintain compliance with the regulatory requirements at issue and could be subject to enforcement absent such compliance.

Specific requests for regulatory waivers included in the Alliance for Better Health Care PPS Project Plan application are addressed below.

**1 Alliance For Better Health Care 10 NYCRR 600.9 (c) 2.a.i**

**Background and Justification submitted with your request:**

The PPS and Partner Organizations may share in distribution of DSRIP funding as part of sharing a patient population and participating in the DSRIP projects. To ensure that aspects of DSRIP that involve distribution of revenue do not violate this regulation which prohibits regulated entities from fee splitting or sharing in gross revenues on non-established entities.

**Response to Waiver Request:**

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

**2 Alliance For Better Health Care 10 NYCRR 401.3(a) 2.a.i**

**Background and Justification submitted with your request:**

AFBHC will need to make rapid changes in HIT. DSRIP requires the expanded use of HIT technologies and interoperability, which will require investment in new EHR technologies, outlay of capital and the provision of vendor services. The reasons for the waiver request are to relieve the PPS and all partners from seeking further review or approval from the Department regarding HIT acquisition, installation, modification or outlay of capital to implement necessary technology advances to participate in DSRIP projects. This waiver will enable the PPS to more expeditiously bring members of the organization to shared patient data platform and improve patient care.

**Response to Waiver Request:**

**HIT Standards.** Approved. The PPS requested waivers of 10 NYCRR 710.1(b) and 401.3(a), pertaining to CON review of Health Information Technology (HIT) changes in existing medical facilities. The waiver request is approved to waive the financial review, however the Department must review each project on a case-by-case basis to ensure IT standards are met. The PPS should contact the Department's Office of Health Information Technology (OHIT) for approval. To do so, please contact: [SHIN-NY@health.ny.gov](mailto:SHIN-NY@health.ny.gov).

**3 Alliance For Better Health Care 10 NYCRR 703.6 3.a.i**

**Background and Justification submitted with your request:**

The PPS requests that the Department treat extension clinics and diagnostic and treatment centers as part-time clinics under 10 NYCRR 710.6 for purposes of review of the construction and operating standards for each project. The waiver is necessary to aid AFBHC during the transition phase to achieving the integration of Behavioral Health and Primary Care.

**Response to Waiver Request:**

**Review of Construction and Operating Standards.** Approvable on a case-by-case basis. The Department will review such requests on a case-by-case basis and will expedite the review of all DSRIP projects.

**4 Alliance For Better Health Care 10 NYCRR 401.3 (a) and (e) 2.a.i**

**Background and Justification submitted with your request:**

This waiver will enable the PPS to promote rapid system reconfiguration as approved by the Department. Granting this waiver will allow the delivery of services to be integrated and collaborative, and expand the ability to meet patient needs in alternative locations at primary care sites and elsewhere in the community and to facilitate the expansion of services and capacity to meet DSRIP goals. The inability of the PPS to react rapidly to the changes in services demand would hinder the successful outcome of the DSRIP projects we have undertaken.

**Response to Waiver Request:**

**Construction Standards.** Denied. The PPS requested a waiver of 401.3(a) and (3), which sets forth construction standards. Due to patient safety concerns, these regulations cannot be waived. However, the Department will expedite the review of projects associated with DSRIP Project Plans to the extent possible.

**5 Alliance For Better Health Care 10 NYCRR 86-4.9 2.a.i**

**Background and Justification submitted with your request:**

The ability to bill for services (for example, primary care and dental) in the same setting will undoubtedly lead to services from each discipline being provided to a patient on the same day in order to maximize different treatment modalities to improve patient compliance by avoiding multiple transportation issues and missed appointments. This is a difficult population to adequately serve given the daily barriers which prevent patients from keeping scheduled appointments. If reimbursement were permitted for two visits on the same day, patient health would be improved. Without this waiver it will be difficult to break the cycle of ED visits for non-emergent conditions. A great number of patients utilize the ED because they can receive many different services at the same time, place, and day. Without this waiver it will much more difficult to achieve one of the main goals of DSRIP: 25% Reduction of unnecessary ED visits by DY5. This waiver would enable providers to be properly reimbursed and greatly add to patient outcomes and convenience.

**Response to Waiver Request:**

**Billing Practice.** No Waiver Needed. Providers should submit one claim for each visit with all the procedures/services rendered on the date of service (e.g., medical and dental). The provider clinic payment will be processed through the APG grouper/pricer and paid in accordance with the APG pricing rules (packaging, discounting, bundling) associated with services normally billed under that APG rate code.

**Background and Justification submitted with your request:**

There are several Article 31 or Article 32 facilities which do not have the financial resources and other infrastructure elements that would allow Medicaid reimbursement for Article 28 physicians who provide services in these OMH/OASAS licensed facilities. Without this waiver it will be financially difficult for the PPS to support Article 28 physicians who provide care off site. This, in turn, will impede the integration of primary care and behavioral services. Granting this waiver will enable the PPS successfully meet the metrics of 3.a.i in a timely manner and improve patient care. This patient population must be treated where they are most comfortable and open to positive change. For this stigmatized population, it would be much more effective to provide reimbursable primary care services in Article 31 or 32 settings.

**Response to Waiver Request:**

**Offsite 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 the Department. In addition, the Department will explore, through value-based payment options, incorporating more flexibility for home visits, telemedicine and team visits.

In cases where waivers are approved, the agencies will send letters directed to the providers, who otherwise would be responsible for complying with the regulatory provisions at issue. Further, providers will be advised that agency staff who conduct surveillance activities will be notified that these regulatory waivers have been approved; however, they should maintain a copy of their waiver letters at any site subject to surveillance.

Please note that the Department will publish on its website a list of regulatory waivers that have been approved to assist PPSs in determining whether additional waivers may be appropriate for the activities within a PPS. Additional requests for waivers, as well as any questions regarding the foregoing, may be sent by 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.

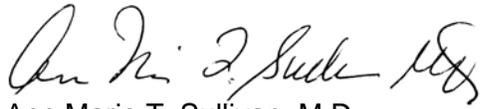
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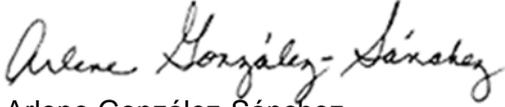
Howard A. Zucker, M.D., J.D.

Commissioner

New York State Department of Health



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



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