



Department  
of Health

Office of  
Mental Health

Office of Alcoholism and  
Substance Abuse Services

December 2, 2016

Montefiore Hudson Valley Collaborative  
Ben Wade, Assistant V.P.  
Montefiore Medical Center  
Planning Department  
111 East 210th Street  
Bronx, New York 10467

Dear Mr. Wade:

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 Montefiore Medical Center in its capacity as lead for the Montefiore Hudson Valley Collaborative Performing Provider System.

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

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

The approval of regulatory waivers is contingent upon the satisfaction of certain conditions. In all cases, providers must be in good standing with the relevant agency or agencies. Other conditions may be applicable as set forth in greater detail below. The failure to satisfy any such conditions may result in the withdrawal of the approval, meaning that the

providers will be required to maintain compliance with the regulatory requirements at issue and could be subject to enforcement absent such compliance.

Specific requests for regulatory waivers are addressed below.

**1 Montefiore Hudson Valley Collaborative 10 NYCRR 401.2(b) 2.a.i,  
2.a.iv, 2.b.iii, 3.a.i, 3.a.ii**

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

For several projects, we anticipate the need to co-locate different service providers. This would require waiver of State regulations restricting shared space, particularly 10 NYCRR 401.2(b) and 401.3(d). We are initially planning such co-location of Article 28 and Article 31 providers, at a minimum, to effectuate the purposes of Integrated Delivery System, Medical Village, Primary and Behavioral Health Integration, Emergency Department (ED) triage, and Behavioral Health Community Crisis Stabilization, and this model may become important for other projects in the future. PPS partners are particularly interested in restructuring ED and outpatient locations to provide enhanced primary care and behavioral health services, thereby integrating care, connecting patients with needed services, and reducing ED reliance. This is a common element of several planned initiatives and advances the fundamental goals of DSRIP. These models will necessarily involve varied providers sharing physical space. Though we are grateful for the State's leadership regarding integrated services, we seek additional flexibility to allow co-location or shared space restrictions to truly effectuate our projects. We note that the State previously indicated its assent for such shared spaces in its Regulatory Flexibility Guidance for Performing Provider Systems, issued September 18, 2014. (See [https://www.health.ny.gov/health\\_care/medicaid/redesign/docs/reg\\_flex\\_guidance.pdf](https://www.health.ny.gov/health_care/medicaid/redesign/docs/reg_flex_guidance.pdf), page 8.) We are more than willing to submit any necessary information to the State, should that be a preferable way to proceed. Moreover, inasmuch as certain federal rules restrict shared space, we also respectfully request that the State continue its work with CMS to permit regulatory flexibility.

To advance the goals of DSRIP and the particular projects identified, it will be necessary for two or more different providers to co-locate or share space. Several DSRIP projects -- Integrated Delivery Systems, Medical Village, ED Care Triage, Integration of Primary Care and Behavioral Health, Behavioral Health Community Crisis Stabilization, and others -- are predicated on the notion of comprehensive, integrated service delivery, and this necessarily requires co-location of a continuum of providers. In furtherance of our common priorities, we wish to be able to provide patient-centered, accessible care as efficiently and seamlessly as possible. For the identified projects, this means having various participating providers in a common space. Regulatory waivers to that end are a necessary complement to the State's facilitation of integrated care delivery

**Response to waiver request:**

**Shared Space/Co-location: No Waiver Needed.** Please see attached guidance relative to allowable initiatives relative to "Shared Space/Co-Location". No waiver is needed to the extent providers follow the attached guidance. The Department/OMH/OASAS do not have the authority to issue any regulatory waivers beyond what is allowable by federal regulations and policy.

**2 Montefiore Hudson Valley Collaborative**  
**2.a.iv, 2.b.iii, 3.a.i, 3.a.ii**

**10 NYCRR 401.3(d)**

**2.a.i.,**

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**3 Montefiore Hudson Valley Collaborative seeking clarification of 14 NYCRR 599.14**  
**2.a.i, 2.a.iv, 3.a.i, 3.a.ii**

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

MHVC appreciates the State's recent changes to OMH regulations, which include new authority to bill for multiple mental health services in one day. However, we seek clarification of the regulation's application to DSRIP projects; there continues to be confusion in the industry regarding permissible billing for multiple services in one day. We want to ensure that the new regulation allows MHVC and our partners to receive payment when a patient requires multiple behavioral health services in one day as part of a DSRIP project. Further, we seek a better understanding of the application of the new regulation for Medicaid fee-for-service versus Medicaid managed care payments. We respectfully suggest a State webinar or meeting to explain the role of 14 NYCRR 599.14 to PPSs. Should our understanding of 14 NYCRR 599.14 be incorrect, we seek regulatory flexibility to bill for multiple behavioral health services in one day by a single provider.

Many patients, particularly those that are reliant on behavioral health services and managing difficult life factors, find it prohibitively difficult to return for necessary services over several days. Practitioners see better commitment to care and consistent improvements when such patients can access, for example, a psychiatry medication adjustment visit and a social work or psychologist's therapy visit the same day. We are grateful for State actions to ensure that this necessary care can be provided feasibly.

**Response to waiver request:**

**Billing for Multiple Services: No Waiver Needed.** Reimbursement for multiple services provided to the same patient on the same date of service is presently accommodated in the APGs if a MHL Article 31 licensed provider is approved to add substance use disorder and/or primary care services under the Integrated Outpatient Services regulations (14 NYCRR Part 598). A MHL Article 31 licensed provider that is approved pursuant to such regulations to integrate services should submit one APG claim for each visit with all the procedures/services rendered on the date of service using the "host's" assigned Integrated Services rate codes. The process for billing is the same whether the provider participates in DSRIP or not. For more information, please see the Integrated Outpatient Services – Implementation Guidance, which can be found here: <https://www.oasas.ny.gov/legal/CertApp/documents/IOSGuid.pdf>. A MHL Article 31 licensed provider that has not submitted an application to integrate services under the Integrated Outpatient Services regulations will be reimbursed consistent with 14 NYCRR 599.14, which allows a provider to bill three services per day up to a maximum of two psychiatric services and one health-related service for the same patient.

<b>4</b>	<b>Montefiore Hudson Valley Collaborative</b>	<b>14 NYCRR 551.6</b>	<b>2.a.iv,</b>
	<b>3.a.i, 3.a.ii,</b>		

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

MHVC is developing projects to provide necessary mental health services in an accessible, time-sensitive, and effective way. To do so, however, we would currently be required to seek potentially extensive and time-consuming prior review per 14 NYCRR 551. We seek a waiver that would allow us to either bypass prior review. This would effectively eliminate weeks if not months of administrative steps, which would otherwise add time and costs to our projects.

We are developing several initiatives to enhance behavioral health care under the identified projects. We are concerned that the delays inherent in receiving prior review under 14

NYCRR 551.6 will prolong project planning and development, slowing our start time for actual care delivery and adding costs.

**Response to waiver request:**

**PAR/CON/Program Standard Exemption Requests. (Department/OMH/OASAS Joint Response) Denied.** In response to regulatory waiver requests of any of the State agencies (the Department, OMH and/or OASAS) to eliminate either the processes by which a program is licensed/certified (e.g., Certificate of Need, Prior Approval Review, etc.) or licensure/certification altogether, none of the State agencies are currently in the position to waive such requirements. While State agencies may waive certain regulatory requirements for DSRIP projects to avoid duplication of requirements and to promote the efficient implementation of projects, regulations related to patient safety cannot be waived. Regulations pertaining to State facility oversight, including OMH Prior Approval Review (PAR), Department Certificate of Need (CON) and OASAS Certification applications, and standards for the certification and operations of programs establish minimally qualifying criteria to promote public safety. However, as had been indicated in previous regulatory waiver requests, the agencies will consider waiving the components of the licensure/certification processes relative to assessment of need and financial feasibility – limiting the licensure/certification reviews to current regulatory compliance and physical plant/environmental standards. The State agencies are committed to expediting, to the extent possible, reviews of all DSRIP-related CON/PAR applications.

**5 Montefiore Hudson Valley Collaborative 10 NYCRR 766.4(b) 2.a.i, 2.b.iii, 3.b.i**

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

In our focus on reducing hospitalizations, we expect patients will receive appropriate and medically necessary home care. This will be an essential component of care management in the most accessible, patient-centered, and resource-efficient manner possible. Currently, physician assistants are not permitted to order home care, though other similar health professionals are. We seek a waiver of 10 NYCRR 766.4 to extend this permission to PAs. MHVC will be responsible for effectively managing care for our patients. To do so, we will be relying on all qualified professionals to maintain close, informed relationships with our patients and keep them healthy at home whenever possible. We expect that physician assistants will be included in this important set of providers and will be able to ascertain when patients will need home care services for effective management of their diseases. However, current regulations would not allow physician assistants to order home care services. We seek to have this limitation remedied through a waiver of 10 NYCRR 766.4.

**Response to waiver request:**

**Ordering of home care by Physician Assistants: Approved.** The request to waive 10 NYCRR 766.4(b) is approved for the purposes of a physician assistant or nurse practitioner ordering home care services for patients as part of a DSRIP project.

**6 Montefiore Hudson Valley Collaborative 10 NYCRR 86-4.9, 86-8.14, 401.2; 14 NYCRR 599.14; 14 NYCRR Parts 822, 841 (Payment for off-site services) 2.a.i, 2.a.iv, 2.b.iii, 3.a.i, 3.a.ii**

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

The State has previously approved MHVC requests for regulatory waivers to facilitate provision of off-site services. We appreciate the State's leadership in this area. Unfortunately, payment is not available for the provision of such services, pursuant to Federal restrictions. MHVC respectfully supports the State's continuing efforts to seek necessary State Plan Amendments (SPAs) and other regulatory changes so that permissible off-site services may be properly billed. We would welcome the opportunity to assist the State in its work, should that be helpful. As the State has acknowledged, MHVC and other PPSs are interested in flexibility to allow practitioner home visits in support of a range of DSRIP projects. Though the State has been supportive of such initiatives, we are all faced with an inability to bill for these services, due to Federal restrictions. This creates a significant barrier to the provision of patient-centered services in appropriate, accessible locations when needed.

## **Response to waiver request:**

**Payment for Home Services: No waiver requested.** The Department of Health does not presently have CMS approval to pay Article 28 clinics for off-site services, other than for FQHCs. The Department will continue to work with CMS on finding a viable solution to this problem.

## **7 Montefiore Hudson Valley Collaborative General request: CON process All**

MHVC respectfully requests that any CON projects requiring approval from multiple state agencies be consolidated into one review process by the State. Consolidation of review will save State and provider resources and permit a streamlined, thoughtful review of a proposed project.

## **Response to waiver request:**

**Prior Review Consolidation: No Waiver Requested.** The Department, OMH and OASAS collaborate in review of regulatory approval requests (CON, LRA and PAR) for providers wishing to integrate services. All three agencies have a common application process for providers integrating services using DSRIP project 3.a.i. thresholds or Integrated Outpatient Services.

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

Please note that the Department of Health will 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,

*Howard Zucker M.D.*

Howard A. Zucker, M.D., J.D.  
Commissioner of Health

*Ann Marie T. Sullivan M.D.*

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

*Arlene González-Sánchez*

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