



Commissioner's Regulatory Waiver

WAIVER ISSUED TO HELP SERVICE PROVIDERS MEET LOCAL NEEDS WHILE MAINTAINING PROGRAM INTEGRITY.

JUNE 25, 2021

WHEREAS, on April 15, 2021, United States Health and Human Services Secretary Xavier Becerra, continued a public health emergency for the United States in responding to COVID19; initiated by former Secretary Alex M. Azar II on January 31, 2020;

WHEREAS, on March 7, 2020, Governor Andrew M. Cuomo declared a State disaster emergency for the entire State of New York due to the transmission of COVID-19 in the State of New York;

WHEREAS, on February 24, 2021, United States President Joseph Biden, determined that it is necessary to continue the national emergency declared by former President Donald Trump in Proclamation 9994 concerning the COVID-19 pandemic, dated March 13, 2020;

WHEREAS, on June 24, 2021, the State disaster emergency has ended;

WHEREAS, the ramifications from the COVID-19 disaster emergency continue to constitute an extreme emergency within the meaning of Section 501.3 of Title 14 of the NYCRR as it has created a public and mental health crisis which threatens the health and safety of individuals with mental illness in the State of New York and the mental health workforce, as well as the fiscal viability of mental health providers; and

WHEREAS, the Commissioner of the New York State Office of Mental Health (the "Commissioner") recognizes that implications from the COVID-19 disaster emergency and the resulting public mental health crisis, continue to present compliance challenges for regulated entities in meeting their obligations set forth in certain of the regulations promulgated under the New York State Mental Hygiene Law ("Mental Hygiene Law").

NOW, THEREFORE, IT IS HEREBY ORDERED that, pursuant to Section 501.3 of Title 14 of the NYCRR, temporary relief be granted to COVID-19 affected regulated entities from certain requirements within Chapter XIII of Title 14 of the NYCRR that are not otherwise required by State or Federal law, as set forth herein.

The following regulatory requirements shall be waived in order to meet local service needs and serve the best interests of service recipients while maintaining program quality and integrity and ensuring the rights, health and safety of service recipients will not be diminished, therefore.

No licensed provider shall be subject to regulatory sanction for noncompliance therewith, where the provider demonstrates good faith compliance with any corresponding guidance issued by the

Office of Mental Health. Such regulatory requirements which are waived in the manner prescribed herein include:

- 1. 14 NYCRR Part 596** is waived with the exception of the following provisions; 596.1(b)(c), 596.2, 596.3(b); 596.4(a)-(p); (r) waive provisions which restrict the use of audio only technologies; 596.5(b),(f), 596.6, (a)(1)(ii)-(vi)(a); (a)(2)-(10); (a)(11)(iii); 596.6(b)(2)(I)-(iv); (b)(3)-(6); (b)(8)-(11); (c); 596.7(a)-(c); (d)(2)-(3); (e)-(g); 596.8.
 - 2. 14 NYCRR §§ 599.13(m)(3); (d)(1)(i)(b)-(c); (d)(1)(ii)(b)-(c); (d)(3)(ii)(a); (d)(4)(ii); (d)(5); (d)(6)(i)(a)(1)-(2); (d)(6)(i)(b)(1)-(2); (d)(6)(iii)-(iv); (e) and 599.14** to reduce minimum service duration standards and enable providers to round up service times within guidelines established by the American Medical Association for applicable procedure codes.
 - 3. 14 NYCRR § 599.10(g) and (i), and 14 NYCRR § 599.11(b)(7) and (11)** to reduce documentation requirements and waive timeframes associated with initial treatment plan development and treatment plan reviews.
 - 4. 14 NYCRR § 599.6(l)** to suspend required provider internal, written utilization review procedures.
 - 5. 14 NYCRR §§ 588.9(a)** to waive minimum service duration timeframes to permit providers to bill for providing services to individuals or collaterals for at least 5 minutes if providers perform and document sustained outreach to clients.
 - 6. 14 NYCRR § 587.16 and 14 NYCRR § 588.9(a)(1)-(4)(5); (d)** to reduce documentation requirements, waive requirements related to treatment plans and timeframes associated with initial treatment plan development and treatment plan reviews.
 - 7. 14 NYCRR § 588.9(b)** suspend required provider internal, written utilization review procedures.
 - 8. 14 NYCRR § 588.7** to reduce minimum service timeframes to permit providers to bill for providing services to individuals or collaterals for at least 5 minutes or for fewer than 5 minutes if providers perform and document sustained outreach to clients.
 - 9. 14 NYCRR § 587.16 and 14 NYCRR § 588.7(k)** to reduce documentation requirements and timeframes associated with initial treatment plan development and treatment plan reviews.
 - 10. 14 NYCRR § 588.7(i)** to suspend provider internal, written utilization review procedures.
 - 11. 14 NYCRR § 588.8(a)** to reduce minimum service duration standards to permit providers to bill for providing services to individuals or collaterals for at least 5 minutes or for fewer than 5 minutes, if providers perform and document sustained outreach to clients.
 - 12. 14 NYCRR § 587.16 and 14 NYCRR § 588.8(d)** to reduce documentation requirements, waive requirements related to treatment plans and timeframes associated with initial treatment plan development and treatment plan reviews.
 - 13. 14 NYCRR § 588.8(b)** to suspend provider internal, written utilization review procedures.
 - 14. 14 NYCRR §§ 512.11(b)(5); (11)(i)and (ii); (13) and (14)** to waive provisions which refer to minimum service duration timeframes and contacts to permit providers to bill for providing
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services to individuals or collaterals for at least 5 minutes or for fewer than 5 minutes, if providers perform and document sustained outreach to clients.

15. 14 NYCRR §§ 512.7(e), 512.8(b) and 512.11(b)(6)(iv) to waive requirements related to recovery planning, including timeframes associated with initial recovery plan development and recovery plan reviews.

16. 14 NYCRR §§ 512.9(h) and 512.7(e)(5)(ii) to suspended provider internal, written utilization review procedures.

17. 14 NYCRR §§ 508.4(i); 508.5(c)(1)-(3) and 508.7(b) to reduce minimum service duration standards, to permit providers to bill for providing services to individuals or collaterals for at least 5 minutes and for fewer than 3 or 6 contacts per month, as applicable, if providers perform and document sustained outreach to clients.

18. 14 NYCRR § 508.5(b)(8) to waive requirements related to reimbursement for services contained in a recipient's formal treatment plan.

19. 14 NYCRR § 595.11(a), (c), and (d); 14 NYCRR § 594.10(a), (b), (d), and (f); and 14 NYCRR § 593.6(c) and (f) to waive regulatory timeframes associated with initial treatment plan development and treatment plan reviews.

20. 14 NYCRR §§ 593.6(b) and 595.11(f) to waive physician's authorization renewal requirement for residential programs, to permit housing providers to continue to bill Medicaid if circumstances related to the crisis prevent the renewal of a physician's authorization within required the timeframes.

21. 14 NYCRR §§ 595.13(a)(1) and 594.14(a), to suspend provider internal, written utilization review procedures.

This Order shall be deemed effective as of June 25, 2021, and shall remain in effect for 60 days until stayed, modified, suspended or terminated by the Commissioner or, where applicable modified service provision or billing requirements have also received approval from the Centers of Medicare and Medicaid Services, when such federal financial participation ends prior to the conclusion of the 60 day period.

Witness, my hand and official seal of the New York State Office of Mental Health at the City of Albany, New York, this 24th day of June in the Year two thousand and twenty-one.



Ann Marie T. Sullivan, MD
Commissioner of the Office of Mental Health