

211 CMR: DIVISION OF INSURANCE

211 CMR 155.00: RISK-BEARING PROVIDER ORGANIZATIONS

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155.01: Purpose, Scope and Authority

211 CMR 155.00, promulgated pursuant to the insurance laws and the Commissioner of Insurance's authority under St. 2012, c. 224 and M.G.L. c. 176T, governs the certification of Risk-Bearing Provider Organizations. 211 CMR 155.00 applies to any Provider Organization that manages the treatment of a group of patients and that bears the Downside Risk of the cost of treating those patients according to the terms of an Alternative Payment Contract.

155.02: Definitions

As used in 211 CMR 155.00, the following words mean:

Alternative Payment Contract: Any contract between a Provider or Provider Organization and a Health Care Payer, Employer or individual, which utilizes Alternative Payment Methodologies.

Alternative Payment Methodologies or Methods: Methods of payment that are not solely based on fee-for-service reimbursements; provided, however, that "alternative payment methodologies" may include, but shall not be limited to, shared savings arrangements, bundled payments, and global payments; and further provided, that "alternative payment methodologies" may include fee-for-service payments, which are settled or reconciled with a bundled or global payment.

Carrier: An insurer licensed or otherwise authorized to transact accident and health insurance under M.G.L. c. 175; a nonprofit hospital service corporation organized under M.G.L. c. 176A; a non-profit Medical Service Corporation organized under M.G.L. c. 176B; or a Health Maintenance Organization organized under M.G.L. c. 176G; and an organization entering into a preferred provider arrangement under chapter 176I, but not including an Employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the Employer; provided, however, that, unless otherwise noted, the term "carrier" shall not include any entity to the extent it offers a policy, certificate or contract that provides coverage solely for dental care services or vision care services.

Center: The Center for Health Information and Analysis established in M.G.L. c. 12C.

Commission: The Health Policy Commission established in M.G.L. c. 6D.

Commissioner: The Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

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Contracting Provider Organization: A Provider Organization that acts on behalf of one or more Health Care Providers or Provider Organizations for the purpose of establishing contracts, including for payment rates, incentives, and operating terms.

Division: The Division of Insurance established pursuant to M.G.L. c. 26, § 1.

Downside Risk: The risk taken on by a Provider Organization as part of an Alternative Payment Contract with a Health Care Payer, Employer, or individual in which the Provider Organization is responsible for either the full or partial costs of treating a group of patients that may exceed the contracted budgeted payment arrangements.

Employer: An Employer as defined in M.G.L. c. 151A, § 1.

Health Care Services: Supplies, care and services of medical, surgical, optometric, dental, podiatric, chiropractic, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, supportive or geriatric nature including, but not limited to, inpatient and outpatient acute hospital care and services, provided by a community health center, home health and hospice care Provider or by a sanatorium, as included in the definition of “hospital” in Title XVIII of the federal Social Security Act, and treatment and care compatible with such services or by a Health Maintenance Organization.

Health Care Payer: A Carrier, Public Health Care Payer or a Carrier acting as a third-party administrator, and includes, for the purposes of 211 CMR 155.00, those organizations who act as subcontractors of Health Care Payers to enter into Alternative Payment Contracts with Providers and Provider Organizations .

Health Maintenance Organization: A company licensed according to M.G.L. c. 176G.

Medical Assistance Program: The Medicaid Program, the Veterans Administration health and hospital programs and any other medical assistance program operated by a governmental unit for persons categorically eligible for such program.

Medical Service Corporation: A corporation established to operate a nonprofit medical service plan as provided in M.G.L. c. 176B.

Medicare Program: The medical insurance program established by Title XVIII of the Social Security Act.

Provider or Health Care Provider: Any person, corporation, partnership, governmental unit, state institution or any other entity qualified under the laws of the commonwealth to perform or provide Health Care Services.

Provider Organization: Any corporation, partnership, business trust, association or organized group of persons in the business of health care delivery or management whether incorporated or not that represents one or more Health Care Providers in contracting with Carriers for the payments of Health Care Services; provided, however, that “Provider Organization” shall include, but not be limited to, physician organizations, physician-hospital organizations, independent practice associations, provider networks, Accountable Care Organizations and any other organization that contracts with Carriers for payment for Health Care Services.

Public Health Care Payer: The federal Medicare Program, including any Carrier or other entity that contracts to pay for or arrange the purchase of benefits under any Medicare program; the MassHealth Program administered by EOHHS pursuant to M.G.L. ch. 6 s. 16A and 118E; any Carrier or other entity that contracts with the Executive Office of Health and Human Services to pay for or arrange the purchase of MassHealth benefits for eligible MassHealth members; any

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Carrier or other entity that pays for or arranges the purchase of any premium assistance payment program and/or insurance subsidy program for low-income individuals and families administered by the Commonwealth Health Insurance Connector Authority, pursuant to M.G.L. c. 176Q, including prepaid health plans subject to the provision of St. 1997, c. 47, § 28; the group insurance commission established under M.G.L. c. 32A; and any city or town with a population of more than 60,000 that has adopted M.G.L. c. 32B.

Registered Provider Organization: A Provider Organization that meets the criteria for registration pursuant to M.G.L. c. 6D, § 12 and has registered with the Commission.

Reserves: The estimated liability for unpaid losses that have occurred as of a given evaluation date. This includes potential losses and losses due but not yet paid.

Risk-Bearing Provider Organization: A Provider Organization that manages the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract.

Risk Certificate: A certificate of solvency issued by the Division that demonstrates that a Risk-Bearing Provider Organization has satisfied the certification requirements of M.G.L. c. 176T and 211 CMR 155.00.

Risk Certificate Waiver: A waiver granted by the Commissioner to a Risk-Bearing Provider Organization from the requirement to obtain a Risk Certificate.

Title XIX: Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.*, or any successor statute enacted into federal law for the same purposes as Title XIX.

Transitional Period: The period of time from the effective date of this regulation up through June 30, 2014.

Transitional Period Waiver: A waiver granted by the Commissioner in his or her discretion to a Risk-Bearing Provider Organization from the requirement to obtain a Risk Certificate during the Transitional Period.

155.03: Applicability

- (1) A Risk-Bearing Provider Organization shall initially submit materials to apply for a Transitional Period Waiver, and thereafter, shall annually submit materials to apply for a Risk Certificate or a Risk Certificate Waiver, as applicable.
- (2) A Carrier shall not be permitted to enter into an arrangement with a Provider Organization whereby the Provider Organization manages the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract as part of an insured health benefit plan network unless the Provider Organization holds a Transitional Period Waiver, a Risk Certificate or a Risk Certificate Waiver, as applicable. A Provider Organization shall not be permitted to manage the treatment of a group of patients and bear Downside Risk according to the terms of an Alternative Payment Contract directly with an Employer or individual unless the Provider Organization holds a Transitional Period Waiver, a Risk Certificate or a Risk Certificate Waiver, as applicable, and such Provider Organization may be required to be licensed as a Carrier in accordance with M.G.L. c. 176T, §2.
- (3) A Provider Organization may enter into an arrangement with a Carrier whereby the Provider Organization manages the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract, with the Carrier acting as a third-party administrator for an Employer's self-funded employee benefit plan, without being licensed as a

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Carrier, provided that the terms of the Provider Organization's Alternative Payment Contract with the Carrier acting as a third-party administrator for an Employer's self-funded employee benefit plan are substantially the same as the terms of the Provider Organization's Alternative Payment Contract with the Carrier for the Carrier's insured business.

- (4) A Provider Organization that utilizes a Contracting Provider Organization to act on its behalf in entering into an Alternative Payment Contract with Downside Risk will not be considered to be a Risk-Bearing Provider Organization for purposes of this regulation, but only if the Contracting Provider Organization itself is subject to this regulation as a Risk-Bearing Provider Organization. If the Contracting Provider Organization, however, is not subject to this regulation as a Risk-Bearing Provider Organization, then the Provider Organization that utilizes such a Contracting Provider Organization to act on its behalf in entering into an Alternative Payment Contract with Downside Risk will be considered to be a Risk-Bearing Provider Organization for purposes of this regulation and must apply for a Transitional Period Waiver, a Risk Certificate or a Risk Certificate Waiver, as applicable.
- (5) A Provider Organization that is seeking to enter into an arrangement to manage the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract shall be subject to the requirements of this regulation to the same extent and degree that a Risk-Based Provider Organization is subject to this regulation, and any reference to a Risk-Based Provider Organization shall be deemed to include any Provider Organization that is seeking to enter into an arrangement to manage the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract, as appropriate.

155.04: Transitional Period Waivers

- (1) Notwithstanding any other requirements set forth in this regulation to the contrary, during the Transitional Period:
 - (a) any Transitional Period Waiver issued by the Commissioner to a Risk-Bearing Provider Organization prior to the effective date of this regulation shall continue to be in effect through June 30, 2014.
 - (b) a Risk-Bearing Provider Organization may apply for a Transitional Period Waiver for the period from the effective date of this regulation through June 30, 2014.
- (2) An application for a Transitional Period Waiver shall be submitted in a form approved by the Commissioner and shall contain:
 - (a) the name of the Provider Organization;
 - (b) the name and contact information for the person within the Provider Organization designated to be the Division's primary contact;
 - (c) the official names of all Health Care Payers and Employers, if any, with which the Provider Organization currently has Alternative Payment Contracts with Downside Risk;
 - (d) net patient service revenue earned by the Provider Organization in the prior calendar year;
 - (e) whether the Provider Organization has any Alternative Payment Contracts with Downside Risk directly with individuals;
 - (f) for a Provider Organization that is seeking to enter into an arrangement to manage the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract, the names of all Health Care Payers and Employers with which the Provider Organization is proposing to enter into such an arrangement on or before July 1, 2014; and
 - (g) any additional information deemed necessary by the Commissioner.
- (3) It shall be within the discretion of the Commissioner to issue or not to issue a Transitional Period Waiver, or to cancel an existing Transitional Period Waiver, as applicable.

155.05: Risk Certificate Waivers

- (1) A Risk-Bearing Provider Organization may apply for a Risk Certificate Waiver if it wishes to demonstrate that its Alternative Payment Contracts do not contain significant downside risk.
 - (a) A Risk-Bearing Provider Organization that has previously been granted a Transitional Period Waiver prior to January 31, 2014, may apply for a Risk Certificate Waiver by no later than February 1, 2014. If such Risk Certificate Waiver is granted by the Division, it would be effective July 1, 2014.
 - (b) A Risk-Bearing Provider Organization that has been granted a Transitional Period Waiver on or after February 1, 2014, may apply for a Risk Certificate Waiver at any time prior to June 30, 2014.
 - (c) A Risk-Bearing Provider Organization that has not been granted a Transitional Period Waiver may apply for a Risk Certificate Waiver at any time.
 - (d) All Risk Certificate Waivers will be effective through the next June 30.
- (2) Each Risk-Bearing Provider Organization may annually apply to renew a current Risk Certificate Waiver for an additional 12-month period, provided that it submits materials in a form approved by the Commissioner by no later than December 1 in the year that its current Risk Certificate Waiver was issued, for a renewal Risk Certificate Waiver to be issued, if appropriate, effective July 1 in the following year. The renewed Risk Certificate Waiver will be effective through June 30 in the year following its year of renewal.
- (3) It shall be within the discretion of the Commissioner to issue or renew a Risk Certificate Waiver.
- (4) An application and renewal for a Risk Certificate Waiver shall include the following information certified by an officer of the applicant Risk-Bearing Provider Organization:
 - (a) the name of the Risk-Bearing Provider Organization;
 - (b) the name and contact information for the person within the Risk-Bearing Provider Organization designated to be the Division's primary contact;
 - (c) the official names of the Health Care Payers and Employers with which the applicant is seeking to enter into an arrangement, or has already entered into an arrangement to manage the treatment of a group of patients, and a statement describing the type(s) of payment arrangement entered into with each Health Care Payer and Employer;
 - (d) whether the applicant is seeking to enter into an arrangement, or has already entered into an arrangement directly with individuals to manage the treatment of a group of patients;
 - (e) a filing fee in the amount of \$250.00 made payable to the "Commonwealth of Massachusetts"; and
 - (f) any other information deemed necessary by the Commissioner.
- (5) Each Risk-Bearing Provider Organization that applies for a Risk Certificate Waiver must submit sufficient information to the Division to demonstrate that its existing or proposed arrangements to manage the treatment of a group of patients according to the terms of one or more Alternative Payment Contracts do not contain significant Downside Risk. The submitted materials should project the proportion of organizational revenue that is subject to Downside Risk during the applicable period, the steps that the Risk-Bearing Provider Organization has taken to prepare for the Downside Risk, and the reasons that the Risk-Bearing Provider Organization believes that the contractual Downside Risk should not be considered significant.
- (6) A Risk-Bearing Provider Organization's application for an initial or renewal Risk Certificate Waiver shall not be considered complete until all materials and information required by M.G.L. c. 176T and 211 CMR 155.00 have been received by the Division. An applicant Risk-

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Bearing Provider Organization shall respond to any request for additional information by the Division within 15 days of the date of the Division's request.

- (7) If a Risk-Bearing Provider Organization applicant is issued a Risk Certificate Waiver:
- (a) the Division shall forward a copy of the Risk Certificate Waiver to the Risk-Bearing Provider Organization, the Commission, and the Center;
 - (b) the Risk Certificate Waiver shall indicate that the waiver expires on June 30 in the year after the year in which the waiver is granted and that the Risk-Bearing Provider Organization shall be required to either submit a renewal application for a Risk Certificate Waiver or submit an application for a Risk Certificate for periods beyond the expiration date; and
 - (c) the Division shall post the names of all Risk-Bearing Provider Organizations who have been issued a Risk Certificate waiver on the Division's website.

A Risk-Bearing Provider Organization that has been issued a Risk Certificate Waiver shall report to the Division any material change(s), including, but not limited to, the addition of new Alternative Payment Contracts, amendments to Downside Risk provisions in existing Alternative Payment Contracts, changes to the number or types of patients that are covered under existing Alternative Payment Contracts or changes to the organizational structure of any Provider Organization, to the information contained in its initial or renewal waiver application, certified by an officer of the Risk-Bearing Provider Organization, within 30 days of such change(s).

- (8) If an applicant is not issued a Risk Certificate Waiver, the Division shall notify the Risk-Bearing Provider Organization, the Commission, and the Center in writing that a Risk Certificate Waiver has not been issued, and the Risk-Bearing Provider Organization must begin the process to apply for a Risk Certificate.
- (9) It shall be within the discretion of the Commissioner to suspend or cancel an existing Risk Certificate Waiver. Such grounds for cancellation or suspension include, but are not limited to, a determination by the Commissioner that the combination of all of the Risk-Bearing Provider Organization's existing or proposed arrangements to manage the treatment of a group of patients according to the terms of one or more Alternative Payment Contracts contains significant Downside Risk. Prior to suspending or cancelling a Risk Certificate Waiver, the Division shall provide written notice to the Risk-Bearing Provider Organization holding the waiver, the Commission, and the Center, and provide the Risk-Bearing Provider Organization 30 days to respond to such notice of suspension or cancellation with the filing of an application for a Risk Certificate.

155.06: Risk Certificates

- (1) Each Risk-Bearing Provider Organization that has not been granted a Transitional Period Waiver or Risk Certificate Waiver shall be required to file an application for a Risk Certificate. Integrated care organizations or senior care organizations contracted under Section 9D or 9F of Chapter 118E that have been certified in accordance with Section 9D(q) or 9F(b) shall be deemed to have satisfied the Risk Certificate requirements for purposes of this regulation and Chapter 176T.
- (a) A Risk-Bearing Provider Organization that has previously been granted a Transitional Period Waiver prior to February 28, 2014, may apply for a Risk Certificate by no later than March 1, 2014. If such a Risk Certificate is granted by the Division, it would be effective July 1, 2014.
 - (b) A Risk-Bearing Provider Organization that has been granted a Transitional Period Waiver on or after March 1, 2014, may apply for a Risk Certificate Waiver at any time prior to June 30, 2014.

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- (c) A Risk-Bearing Provider Organization that has not been previously granted a Transitional Period Waiver, may file an application for a Risk Certificate at any time.
 - (d) All Risk Certificates will be effective from the day it is issued through the next June 30.
- (2) The application shall be certified by at least two officers of the Risk-Bearing Provider Organization, including a senior executive officer or partner, and either the treasurer or an assistant treasurer. The application shall include the following:
- (a) the most recent materials submitted by the applicant Risk-Bearing Provider Organization to the Commission pursuant to M.G.L. c. 6D, § 12 as a Registered Provider Organization, unless such materials are already on file with the Division, or unless such registration has not yet occurred;;
 - (b) the names of the Health Care Payers and Employers with which the applicant is seeking to enter into an arrangement, or has already entered into an arrangement to manage the treatment of a group of patients;
 - (c) whether the applicant is seeking to enter into an arrangement, or has already entered into an arrangement directly with individuals to manage the treatment of a group of patients;
 - (d) audited financial statements, where available, showing the applicant Risk-Bearing Provider Organization's assets, liabilities, reserves and sources of working capital and other sources of financial support and projections of the results of operations for the succeeding 3 years.
 - (e) a financial plan, including the following:
 - 1. a statement indicating the anticipated timing for receipt of income from Alternative Payment Contracts with Downside Risk versus the anticipated timing of the incurrence of expenses associated with those Alternative Payment Contracts with Downside Risk;
 - 2. a statement of the applicant Risk-Bearing Provider Organization's plan to establish and maintain sufficient financial resources that will protect the applicant Risk-Bearing Provider Organization from the potential losses from Downside Risk;
 - 3. copies of insurance or other agreements which protect the applicant Risk-Bearing Provider Organization from potential losses from Downside Risk; and
 - 4. a detailed description of mechanisms put in place by the applicant Risk-Bearing Provider Organization to monitor the financial solvency of any subcontracting Provider Organization(s) where the subcontracting entity assumes Downside Risk in its arrangement with the applicant Risk-Bearing Provider Organization or Provider Organization;
 - (f) a utilization plan describing the methods by which the applicant Risk-Bearing Provider Organization will monitor inpatient and outpatient utilization under the Alternative Payment Contracts with Downside Risk;
 - (g) an actuarial certification, consistent with 211 CMR 155.07, that provides a statement that, after examining the terms of all the applicant Risk-Bearing Provider Organization's intended or existing Alternative Payment Contracts with Downside Risk, the actuary concludes that such Alternative Payment Contracts are not expected to threaten the financial solvency of the applicant Risk-Bearing Provider Organization;
 - (h) demonstrations that contracts between the applicant Risk-Bearing Provider Organization and other Provider Organizations include provisions that conspicuously prohibit Health Care Providers from collecting or attempting to collect from a patient money that is owed to the Health Care Provider by the applicant Risk-Bearing Provider Organization, or other Provider Organization;
 - (i) a description of the level and nature of risk assumed across all the Provider Organization's contracts, including details about aggregate number of members that are covered under Alternative Payment Contracts;
 - (j) a description of the applicant's internal and external appeals system ;

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- (k) a statement that indicates whether or not the applicant Risk-Bearing Provider Organization has entered into any Alternative Payment Contracts with Downside Risk with any Employers or individuals, and if the applicant Risk-Bearing Provider Organization has entered into any such Alternative Payment Contracts with Downside Risk, a detailed description of the number of contracts the applicant Risk-Bearing Provider Organization has entered into with Employers or individuals; and
 - (l) a filing fee in the amount of \$500.00 made payable to the “Commonwealth of Massachusetts;” and
 - (m) any additional information deemed necessary by the Commissioner.
- (3) Each Risk-Bearing Provider Organization may annually apply to renew a current Risk Certificate for an additional 12-month period, provided that it submits materials in a form approved by the Commissioner by no later than February 1 in the year following the year that its current Risk Certificate was issued, for a renewed Risk Certificate to be issued, if appropriate, effective July 1 of that same year. The renewed Risk Certificate will be effective through June 30 in the year following its year of renewal. The information contained in the renewal application shall be certified by at least two officers of the Risk-Bearing Provider Organization and include the following information:
- (a) the most recent materials submitted by the applicant Risk-Bearing Provider Organization to the Commission pursuant to M.G.L. c. 6D, § 12 as a Registered Provider Organization, unless such materials are already on file with the Division, or unless such registration has not yet occurred;
 - (b) any material changes to the applicant Risk-Bearing Provider Organization’s prior application for a Risk Certificate that were not submitted to the Division during the course of the previous year;
 - (c) any new or modified arrangements to manage the treatment of a group of patients, whereby the applicant bears Downside Risk according to the terms of an Alternative Payment directly with individuals;
 - (d) an updated list of the names of the Health Care Payers and Employers with which the applicant has entered into an arrangement to manage the treatment of a group of patients, whereby the applicant bears Downside Risk according to the terms of an Alternative Payment, and a list of those arrangements with Health Care Payers and Employers that have ended during the previous year;
 - (e) updated financial statements showing the applicant Risk-Bearing Provider Organization’s assets, liabilities, Reserves and sources of working capital and other sources of financial support and projections of the results of operations for the succeeding 3 years.
 - (f) all changes to the previous year’s filed financials;
 - (g) all changes to the previous year’s filed utilization plan;
 - (h) an actuarial certification, consistent with 211 CMR 155.07, that provides a statement that, after examining the terms of all the applicant Risk-Bearing Provider Organization’s Alternative Payment Contracts with Downside Risk, the actuary concludes that such Alternative Payment Contracts are not expected to threaten the financial solvency of the applicant Risk-Bearing Provider Organization during the period of the renewing Risk Certificate;
 - (i) a filing fee in the amount of \$500.00 made payable to the “Commonwealth of Massachusetts;” and
 - (j) any other information deemed necessary by the Commissioner.
- (4) A Risk-Bearing Provider Organization’s application for an initial or renewal Risk Certificate shall not be considered complete until all required materials and information required by M.G.L. c. 176T and 211 CMR 155.00 have been received by the Division. An applicant Risk-Bearing Provider Organization shall respond to any request for additional information by the Division within 15 days of the date of the Division’s request.

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- (5) A Risk-Bearing Provider Organization shall report to the Division any material change(s) to the information contained in its most recent application for a Risk Certificate in a document certified by an officer of the Risk-Bearing Provider Organization, within 30 days of such change(s).
- (6) If a Risk-Bearing Provider Organization is issued a Risk Certificate:
 - (a) the Division shall forward a copy of the Risk Certificate to the applicant, the Commission, and the Center;
 - (b) the Risk Certificate shall indicate that it expires the next June 30 after it was issued, and that the Risk-Bearing Provider Organization shall be required to either submit a renewal application for a Risk Certificate or submit an application for a Risk Certificate Waiver for periods beyond the expiration date; and
 - (c) the Division shall post the names of all Risk-Bearing Provider Organizations who have been issued a Risk Certificate on the Division's website.
- (7) If an applicant Risk-Bearing Provider Organization is denied an initial Risk Certificate, or an applicant's Risk Certificate renewal request is denied:
 - (a) the Division shall initially notify the applicant in writing, and advise the applicant of the reason for any refusal to issue or renew a Risk Certificate;
 - (b) the Division shall also outline in the initial notice the steps the applicant must take in order to meet the standards to obtain or renew the Risk Certificate, and if the applicant does not take the steps identified in the initial notice within 30 days, the Division will provide a final notification to the applicant that its request for an initial Risk Certificate is denied, or the applicant's Risk Certificate renewal request is denied, and
 - (c) the Division will forward a copy of the final notice to the Commission and Center.
- (8) An applicant that has been denied an initial Risk Certificate, or an applicant's Risk Certificate renewal request has been denied, may make written demand upon the Commissioner within 30 days of receipt of such final notification for a hearing before the Commissioner to determine the reasonableness of the denial. The hearing shall be held pursuant to Chapter 30A.

155.07: Actuarial Certifications

- (1) A Risk-Bearing Provider Organization shall provide the following Actuarial Certification in a form acceptable to the Commissioner:
 - (a) For a Provider Organization that is seeking to enter into an arrangement to manage the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract, certification by an actuary that the procedural controls within the prospective contract or in anticipation of the contract, are such that the contract is not expected to threaten the financial solvency of the Provider Organization; or
 - (b) For a Risk-Bearing Provider Organization that already has entered into an arrangement to manage the treatment of a group of patients and bears Downside Risk according to the terms of an Alternative Payment Contract, certification by an actuary that the terms of the contract are not expected to threaten the financial solvency of the Risk-Bearing Provider Organization during the period that the Risk Certificate is in effect.

155.08: Examinations of Risk-Bearing Provider Organizations

- (1) The Commissioner may examine the affairs of a Risk-Bearing Provider Organization regarding its arrangement to manage the treatment of a group of patients and bear Downside Risk according to the terms of an Alternative Payment Contract when the Commissioner deems prudent, but not less frequently than once every three years for those with Risk Certificates.

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- (2) The charge for each examination shall be borne by the Risk-Bearing Provider Organization as set forth in M.G.L. c. 175, § 4.
- (3) The examination shall be conducted in accordance with the procedures set forth in M.G.L. c. 175, § 4 and M.G.L. c. 176T, § 4.

155.09: Noncompliance with 211 CMR 155.00

- (1) If the Commissioner determines that a Provider Organization qualifies as a Risk-Bearing Provider Organization and is subject to this regulation, but has failed to submit an application for an initial Risk Certificate, or an initial Risk Certificate Waiver, as applicable, the Division shall provide written notice to the Provider Organization, as well as to the Commission and the Center. If a Risk-Bearing Provider Organization fails to submit the annual renewal application for either a Risk Certificate or a Risk Certificate Waiver to the Division in the form and within the time provided, the Division shall provide written notice to the Risk-Bearing Provider Organization or Provider Organization, as well as to the Commission and the Center.
- (2) If the Division determines that a Risk-Bearing Provider Organization has entered into an arrangement to manage the treatment of a group of patients and bear Downside Risk according to the terms of an Alternative Payment Contract directly with any Employers or individuals, the Division will contact the Risk-Bearing Provider Organization or Provider Organization in writing and may require the Risk-Bearing Provider Organization or Provider Organization to be otherwise licensed pursuant to the criteria set forth in M.G.L. c. 176T, § 2.
- (3) If the Commissioner determines that a Risk-Bearing Provider Organization's existing or proposed arrangement to manage the treatment of a group of patients and bear Downside Risk according to the terms of an Alternative Payment Contract is likely to threaten the financial solvency of the Risk-Bearing Provider Organization, the Commissioner shall provide written notice to the Risk-Bearing Provider Organization. A copy of such notice shall be provided to the Commission and the Center.
- (4) The Commissioner shall not suspend or cancel a Risk Certificate unless the Commissioner has first afforded the Risk-Bearing Provider Organization an opportunity for a hearing pursuant to Chapter 30A. After hearing, the Commissioner may suspend or cancel a Risk-Bearing Provider Organization's Risk Certificate upon a determination that:
 - (a) the Risk-Bearing Provider Organization has not cured a threat to its financial solvency;
 - (b) the Risk-Bearing Provider Organization's application for a Risk Certificate contained false, misleading or fraudulent information;
 - (c) the Actuarial Certification that was part of the Risk Certificate application is withdrawn;
or
 - (d) the Risk-Bearing Provider Organization has otherwise failed to comply with the requirements of M.G.L. c. 176T or 211 CMR 155.00.
- (5) Upon a ruling after hearing to suspend or revoke a Risk Certificate, the Commissioner shall notify the Risk-Bearing Provider Organization, in writing, of the reason(s) for the suspension or cancellation of its Risk Certificate. A copy of such notice shall be provided to the Commission and Center.
- (6) The Commissioner may take such other action as appropriate under law to enforce the requirements of M.G.L. c. 176T or 211 CMR 155.00.

155.10: Severability

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If any section or portion of a section of 211 CMR 155.00, or the applicability thereof to any person or circumstance is held invalid by any court competent jurisdiction, the remainder of 211 CMR 155.00, or the applicability thereof to other persons or circumstances, shall not be affected thereby.