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**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**

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**HEALTH COVERAGE (RBPO)**  
**Filing Guidance Notice 2015-C**

To: Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc. and Health Maintenance Organizations (collectively, “Carriers”); and Provider Organizations that have Entered into or Intend to Enter into Alternative Payment Contracts with Downside Risk

From: Kevin P. Beagan, Deputy Commissioner, Division of Insurance

Date: July 22, 2015

Re: Supplemental Guidelines on Submitting Filing Materials Relative to the Certification of Risk-Bearing Provider Organizations

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The Division of Insurance (“Division”) issues this Filing Guidance Notice to supplement the guidelines set forth in Bulletin 2014-05, *Guidelines on Submitting Filing Materials Relative to the Certification of Risk-Bearing Provider Organizations Under Chapter 176T of the General Laws and 211 CMR 155.00*. As set forth in Bulletin 2014-05, the Division is responsible for implementing the requirements of Massachusetts General Laws Chapter (“Chapter”) 176T and the Division’s regulation 211 CMR 155.00 *et seq.* (the “Regulation” or “211 CMR 155.00”) in a manner that will promote the development of Alternate Payment Contracts with Downside Risk while establishing appropriate safeguards for Massachusetts’ health care delivery system and the patients it serves.

**A. Current Application Deadlines for 2015 and 2016**

The application requirements for Risk-Bearing Provider Organizations (“RBPO”) seeking Risk Certificates and Risk Certificate Waivers are set forth in Chapter 176T and the Regulation. Applications for both Risk Certificates and Risk Certificate Waivers for the Annual Term beginning March 1, 2015, will be accepted on a rolling basis during 2015. For *renewal* applications for Risk Certificates and Risk Certificate Waivers for the Annual Term beginning

March 1, 2016, all renewal applications for Risk Certificate Waivers will be due by August 31, 2015; *renewal* applications for Risk Certificates will be due by November 15, 2015.

While *initial* applications for Risk Certificate Waivers for the Annual Term beginning March 1, 2016, will be accepted on a rolling basis beginning August 31, 2015, if an RBPO with an existing Risk Certificate is intending to seek a Risk Certificate Waiver for the term beginning March 1, 2016, then the RBPO should submit its application for a Risk Certificate Waiver by August 31, 2015. Also, if an RBPO wants to have its application for an initial Risk Certificate Waiver reviewed and approved prior to March 1, 2016, then the applicant should have its application filed by August 31, 2015.

*Initial* applications for Risk Certificates for the Annual Term beginning March 1, 2016, will be accepted on a rolling basis beginning November 15, 2015. If an RBPO wants to have its application for a Risk Certificate reviewed and approved prior to March 1, 2016, then the applicant should have its application filed by November 15, 2015.

Form applications for Risk Certificates and Risk Certificate Waivers, including applications that can be completed on-line, are available on the Division's website at: <http://www.mass.gov/ocabr/government/oca-agencies/doi-lp/risk-certificate-application-information.html>.

## **B. Additional Guidance Concerning Actuarial Certifications**

For materials forwarded in 2014 with respect to applications for Risk Certificate for the annual term beginning March 1, 2015, the Division issued guidance identifying a review process that would be considered acceptable, but noted that beginning with applications for Risk Certificates with terms beginning March 1, 2016 and thereafter, *only* an actuarial certification conducted in compliance with Chapter 176T and 211 CMR 155.07 would be acceptable to the Division from an RBPO seeking to obtain a Risk Certificate.

All applications for Risk Certificates for the Annual Term beginning March 1, 2016, must include the actuarial certification as required under 211 CMR 155.07. The certification is to be submitted "in a form that is acceptable to the Commissioner." The certification is to be signed by a member of good standing with an actuary society located in the United States. The Division will maintain a list on its website of those actuaries who have expressed interest in conducting actuarial reviews and certifications according to Chapter 176T and 211 CMR 155.07.

When preparing the actuarial certification, each Alternate Payment Contract with Downside Risk is to be reviewed individually as well as part of the set of all of the RBPO's Alternate Payment Contract with Downside Risk. As part of the review, actuaries will conduct simulations or take other analytic approaches which look at solvency under reasonably adverse conditions.

When the review is completed, the actuarial certification to be signed should contain terms substantially similar to the following:

"This opinion is related to my review of the total Downside Risk within [*insert name of RBPO*]'s existing and prospective Alternate Payment Contracts in conjunction with a review of the RBPO's financial condition and procedural

controls, and in some circumstances, according to the guidance provided by the Massachusetts Division of Insurance, in conjunction with [insert name of RBPO]'s application for a Risk Certificate for the Term Beginning March 1, [enter year]. The review that was conducted was of the Downside Risk within the Alternate Payment Contracts and did not review other risks, including investment risk and other business risks.

Based upon the limited scope of my review of the Downside Risk within the Alternate Payment Contracts described above, I find that the Downside Risk associated with the Alternate Payment Contracts is not expected to cause insolvency to the entity on their own, without consideration of other risks that could impact [insert name of RBPO]'s financial solvency during the 12-month period that the proposed Risk Certificate will be in effect.”

### **C. Additional Guidance Regarding Applications for Risk Certificate Waivers**

Under Chapter 176T and 211 CMR 155.05(4), an RPBO may apply for a Risk Certificate Waiver if it wishes to demonstrate that its Alternative Payment Contracts do *not* contain “significant” Downside Risk. The burden is on the applicant to submit sufficient information to the Division to demonstrate that its existing or expected 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, and it is within the Commissioner’s discretion as to whether to grant or deny any application for a Risk Certificate Waiver.<sup>1</sup>

The materials submitted to the Division by the Risk Certificate Waiver applicant should project the proportion of organizational revenue that is subject to Downside Risk during the applicable period, the steps that the RBPO has taken to prepare for the Downside Risk, and the reasons that the RBPO believes that the contractual Downside Risk should not be considered significant.

For *all* Risk Certificate Waiver applications, the key factors that will be weighed by the Division to determine whether the RBPO’s Alternative Payment Contracts contain “significant” Downside Risk include the following:

- The total amount of the applicant’s net patient services revenue (“NPSR”), where NPSR is defined as the total dollar amount of a Provider Organization’s charges for services rendered in a Fiscal Year, less any contractual adjustments;
- The amount of the applicant’s NPSR that is subject to Downside Risk;
- The percentage of the RBPO’s total NPSR that is subject to Downside Risk;
- The total maximum loss that the RBPO would be subject to through Alternative Payment Contracts subject to Downside Risk; and
- The maximum loss that the RBPO would be subject to through Alternative Payment Contracts subject to Downside Risk as a percentage of its total NPSR.

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<sup>1</sup> In 2014, Risk Certificate Waivers were issued to all RPBO applicants that had NPSR of *less than* \$15,000,000. The granting of such automatic risk certificate waivers was a temporary measure and was limited *solely* to waivers issued for the March 1, 2015 annual term. There is *no* similar measure in place for Risk Certificate Waivers for the March 1, 2016 annual term.

Where an RBPO can demonstrate that it has *only* a small proportion of its revenue derived from health services provided under Alternate Payment Contracts, and *only* a small percentage of the payments that it receives under those Alternate Payment Contracts contain Downside Risk, it is likely that the RBPO's Downside Risk would not be found to be "significant." For example, under most circumstances the Commissioner is likely to conclude that an RBPO's Downside Risk would not be considered to be significant where an RBPO can demonstrate through its most recently audited financial statements that the revenue from its Alternate Payment Contracts with Downside Risk account for less than 5% of the RBPO's NPSR *and* the RBPO has the net worth – where "net worth" is defined to be the RBPO's assets less its liabilities – sufficient to fund the maximum losses from its Alternate Payment Contracts with Downside Risk.

#### **D. Filing Materials with the Division**

In order to facilitate the review of materials submitted to the Division as part of applications for Risk Certificates or Risk Certificate Waivers, such applications and materials should be sent to the Division via electronic mail at [DOLRBPO@state.ma.us](mailto:DOLRBPO@state.ma.us). Any required filing fees should be sent by mail, by courier or by hand to the Division, referencing "RBPO Application Filing Fee."

Any questions regarding this Filing Guidance Notice should be directed to: Kevin P. Beagan, Deputy Commissioner of the Health Care Access Bureau, (617) 521-7323, [kevin.beagan@state.ma.us](mailto:kevin.beagan@state.ma.us).