



COMMONWEALTH OF MASSACHUSETTS
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DIVISION OF INSURANCE

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BULLETIN 2012-08

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: Joseph G. Murphy, Commissioner of Insurance

Date: November 20, 2012

Re: Transitional Rules for Carriers and Provider Organizations Relative to the Certification of Risk-Bearing Provider Organizations

The new Massachusetts health care payment reform law, Chapter 224 of the Acts of 2012, became effective on November 4, 2012. Chapter 224, in part, creates a new Chapter 176T of the General Laws, under which the Division of Insurance ("Division") must annually certify provider organizations that take on certain financial risk through alternative payment contracts with Carriers. The purpose of certification is to require provider organizations entering into these kinds of contracts (known as "Risk-Bearing Provider Organizations") to demonstrate on an annual basis that they do not assume excessive financial risk that could threaten their financial solvency.

General Requirements of Chapter 176T

Chapter 176T applies to any provider organization that enters into an alternative payment contract to manage the treatment of a group of patients in which the provider organization bears the risk (known as "Downside Risk") that the cost of treating those patients might exceed the contract's budgeted payment. Any health care provider, including a corporation, partnership, business trust, association, or organized group of providers, that enters into such a contract with a Carrier for the payment of health care services would, in most circumstances, be deemed to be a Risk-Bearing Provider Organization under the new law. Note that the Division does not consider service-based payments, including but not limited to, diagnostic-related group payments, "per diems" or bundled payments, to constitute Downside Risk under Chapter 176T.

Under Chapter 176T, each Risk-Bearing Provider Organization must apply to the Division for a risk certificate (hereinafter "Risk Certificate"), whereby the Risk-Bearing Provider Organization demonstrates that it meets certain requirements, including establishing that the Downside Risk in the organization's alternative payment contracts is not expected to threaten its solvency. In the alternative, the Risk-Bearing Provider Organization may apply to the Division for a risk certificate waiver (hereinafter "Risk Certificate Waiver"), which will be issued if the provider organization demonstrates that its alternative payment contracts with Carriers do not contain significant Downside Risk.

Transition Period Rules

Although Chapter 176T became effective on November 4, 2012, the Division considers the period from November 4, 2012 through December 31, 2013 to be a transition period ("Transition Period") with respect to the issuance of Risk Certificates or Risk Certificate Waivers. The Division will issue regulations during the Transition Period to define the process that Risk-Bearing Provider Organizations must follow to apply for Risk Certificates or Risk Certificate Waivers after the Transition Period expires.

During the Transition Period, provider organizations and Carriers may enter into and continue to participate in alternative payment contracts with Downside Risk if the provider organization applies for and receives a transition period waiver from the Division (hereinafter "Transition Period Waiver"). The Division will consider provider organizations that have received a Transition Period Waiver to be in compliance with Chapter 176T during the Transition Period.

During the Transition Period, the following requirements will be in effect:

- A. Any provider organization that had any alternative payment contracts with Downside Risk in effect on November 4, 2012 shall be granted a Transition Period Waiver, provided it submits the application materials noted below to the Division *no later than December 21, 2012*. Notwithstanding this deadline, a provider organization that has net patient service revenue of less than \$5 million shall have until *March 1, 2013* to submit its application materials to the Division. For purposes of this Bulletin, net patient service revenue is defined as the total revenue earned for the care of patients net of any contractual discounts given to health care payers.
- B. Any provider organization seeking to enter into any initial alternative payment contract with Downside Risk on or after November 4, 2012, but before October 1, 2013, shall submit the application materials noted below to the Division at least 60 days prior to the proposed effective date of the contract.

- C. An application for a Transition Period Waiver shall include the following information:
- (1) The name of the provider organization;
 - (2) The name and contact information for the person within the provider organization designated to be the Division's primary contact;
 - (3) The official names of all health care payers and employers, as defined in Chapter 176T (if any), with which the provider organization currently has alternative payment contracts with Downside Risk;
 - (4) Net patient service revenue earned by the provider organization in 2011;
 - (5) Whether the provider organization has any alternative payment contracts with Downside Risk directly with individuals;
 - (6) For provider organizations that do not yet have any alternative payment contracts with Downside Risk, the names of all health care payers and employers with which the provider organization is proposing to enter such contracts; and
 - (7) Any additional information deemed necessary by the Division.

All applications should be submitted electronically to the Division at DOIrupo@state.ma.us. The Division will review all complete applications in a timely fashion and issue Transition Period Waivers that will be in effect through the end of the Transition Period.

Carrier Responsibilities During the Transition Period

Chapter 224 of the Acts of 2012 also amends Chapter 176O to prohibit Carriers from entering into or continuing an alternate payment contract with Downside Risk with a Risk-Bearing Provider Organization, unless the organization has obtained either a Risk Certificate or a Risk Certificate Waiver, as described in Chapter 176T. During the Transition Period, any Carrier that is either entering into or continuing an alternate payment contract with Downside Risk with a provider organization that has obtained a Transitional Period Waiver shall be deemed to be in compliance with the relevant provision of Chapter 176O.

All Carriers must contact all provider organizations with which the Carrier currently has an alternate payment contract with Downside Risk and notify the organization about the contents of this Bulletin, as well as the provider organization's responsibility to submit a Transition Period Waiver application to the Division in accordance with the deadlines set forth above.

Any questions regarding this Bulletin should be directed to Kevin P. Beagan, Deputy Commissioner of the Health Care Access Bureau, at (617) 521-7323, or kevin.beagan@state.ma.us.