



## COMMONWEALTH OF MASSACHUSETTS

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### HEALTH POLICY COMMISSION BULLETIN HPC-OPP-2014-01 and DIVISION OF INSURANCE BULLETIN 2014-10

**To:** Commercial Health Insurers; Blue Cross Blue Shield of Massachusetts, Inc., Health Maintenance Organizations; Health Care Consumers; Health Care Providers; and Other Interested Parties

**From:** David Seltz, Executive Director, Health Policy Commission,  
Joseph G. Murphy, Commissioner of Insurance

**Date:** November 4, 2014

**Re:** Changes to Massachusetts General Laws Chapter 6D, §16 and Chapter 176O, §§ 12 and 16 Affecting Disclosure of Medical Necessity Criteria

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Chapter 165 of the Acts of 2014 ("Ch. 165"), which took effect on July 1, 2014, made changes to Massachusetts' requirements relative to consumer, provider and government access to the medical necessity criteria used by insurance carriers and their agents. Specifically, Sections 18, 172 and 173 of Ch. 165 amended Massachusetts General Laws Chapter ("Chapter") 6D, §16, Chapter 176O, §12 and Chapter 176O, §16 respectively.

The amendments created consistent language among the three Massachusetts statutes. The law now requires carriers to make utilization review and medical necessity criteria and protocols available to the Health Policy Commission's Office of Patient Protection ("OPP"), the Division of Insurance ("Division"), health plan members or prospective members, health care providers, and the public as follows:

- Access for the public: Utilization review criteria, medical necessity criteria and protocols shall be made available to the public at no charge; provided, however, that licensed, proprietary criteria purchased by a carrier or utilization review organization shall not be made available to

the public. Pursuant to Chapter 176O, §12, which became effective August 1, 2014,<sup>1</sup> carriers shall provide access to non-proprietary criteria and protocols by posting the criteria and protocols on a public website. Carriers shall make such criteria and protocols available on a public website as soon as possible but no later than January 1, 2015. Carriers shall also provide access to non-proprietary criteria and protocols by providing copies of criteria and protocols upon request and free of charge. Criteria and protocols posted on a public website must be easily accessible and up-to-date.

- **Access for Insureds and Prospective Insureds:** Carriers shall provide criteria and protocols to insureds and prospective insureds upon request and free of charge. Where the insured or prospective insured is seeking licensed, proprietary criteria, the carrier may limit the information provided to that which is relevant to the particular treatments or services identified by the insured or prospective insured.
- **Access for Health Care Providers:** Carriers shall provide criteria and protocols to health care providers upon request and free of charge. Where the health care provider is seeking licensed, proprietary criteria, the carrier may limit the information provided to that which is relevant to the particular treatments or services identified by the health care provider.
- **Access for OPP and the Division:** Carriers shall provide all criteria and protocols upon request to OPP and the Division free of charge, including licensed, proprietary criteria and protocols purchased by a carrier. Any such licensed, proprietary criteria and protocols purchased by a carrier provided to OPP and the Division shall not be public records and shall be exempt from disclosure under the public records laws. OPP and the Division may request the entire set of utilization review criteria, medical necessity criteria and protocols, and in response to such a request the carrier shall provide all requested documents.

To the extent that these statutory changes are inconsistent with existing regulations 958 CMR 3.101(3) and 211 CMR 52.00, the statutory changes supersede any inconsistent provisions in these regulations. Carriers and other parties shall follow the statutory provisions as outlined in this Bulletin pending amendments to 958 CMR 3.101(3) by the Health Policy Commission and 211 CMR 52.00 by the Division consistent with the new law.

Please direct any questions to Jenifer Bosco, Director of the Office of Patient Protection, Health Policy Commission, at 617-979-1413 or [jenifer.bosco@state.ma.us](mailto:jenifer.bosco@state.ma.us), or to Nancy Schwartz, Director of the Bureau of Managed Care, Division of Insurance at 617-521-7347 or [nancy.schwartz@state.ma.us](mailto:nancy.schwartz@state.ma.us).

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<sup>1</sup> Section 304 of Chapter 224 of the Acts of 2012 ("Ch. 224") was amended by Chapter 157 of the Acts of 2014, which moved the effective date of Ch. 224's amendments to Chapter 176O, §12 from October 1, 2015 to August 1, 2014.