

Amended 11/4/16
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Commercial Fee for For-Profit Approved M.G.L. C.71b Special Education Programs

For-profit providers may retain a standard commercial fee of 20% of Commonwealth revenues for approved M.G.L. c.71B special education program(s). If a for-profit believes this fee should be a higher percentage, it must submit the requested percentage, accompanied by a detailed justification, by no later than May 31 prior to the start of the next fiscal year to the Operational Services Division. The Operational Services Division (OSD) will carefully review the request and will accept it, reject it or propose a compromise percentage prior to the start of the fiscal year.

Regulation 808 CMR 1.00, Compliance, Reporting and Auditing for Human and Social Services, contains a provision (1.03(6)) that requires OSD to prospectively determine the amount of profit, if any, that may be earned by an approved M.G.L. c.71B private special education program. The relevant excerpts from 808 CMR 1.00 are printed below:

Commercial Fee Provisions of 808 CMR 1.00, Compliance, Reporting and Auditing for Human and Social Services

1.02 Definitions

Commercial Fee A prospectively negotiated earnings allowance derived from a net surplus of Contract Revenue and reimbursable operating costs associated with Human and Social services provided by a for-profit contractor to the Commonwealth pursuant to 808 CMR 1.00. Payments and related expenses received from other governmental payors, allocated administrative revenue and payments from the general public derived from clients, parents or guardians for services rendered to clients not Sponsored by any governmental entity are not considered in the establishment of the for-profit earnings allowance.

1.03 General Provisions

(6) Commercial Fee. For-profit contractors with authorized prices furnished via all compensation structures in all types of contracts are to be reimbursed in an amount not to exceed the contract reimbursable operating costs incurred by the contractor for the services provided to the Department pursuant to 808 CMR 1.00. Departments are permitted to prospectively negotiate a for-profit earnings allowance for the purpose of furnishing a Commercial Fee to for-profit contractors, which is in excess of the contract reimbursable operating costs for the services being procured. Departments are not required or expected to furnish a Commercial Fee, which is in excess of contract reimbursable operating costs to for-profit Contractors. Each contract executed between a department and a for-profit contractor must either a) explicitly indicate when a Commercial Fee has not been established by indicating that the earnings allowance is zero or b) clearly indicate the amount of the negotiated earnings allowance, by percentage or dollar amount, in the contract. If a contract contains language that does not establish either

an earnings allowance of zero or a specific negotiated earnings allowance, then the for-profit contractor may not retain a Commercial Fee from such a contract. In addition, the for-profit contractor may not retain a Commercial Fee from a contract with deficit results of operations or from a cost reimbursement contract. Departments shall consider several approaches in developing a reasonable for-profit earning allowance in accordance with OSD policies and procedures issued pursuant to 808 CMR 1.00 and 801 CMR 21.00. The provisions of this language also apply to M.G.L. c. 71B approved private special education Programs and contracts that utilize non-negotiated unit rates established by Departments and the Division of Health Care Finance and Policy. OSD shall determine the Commercial Fee, if any, prospectively for M.G.L. c. 71B approved private special education Programs. Departments shall monitor the amount of Commercial Fee from the net surplus from Contract Revenues (or revenues received by M.G.L. c. 71B private special education Programs) and reimbursable costs retained by each for-profit Contractor in any given year and recoup funds or reduce future prices when appropriate in accordance with this regulatory provision and other guidance issued by OSD.