

958 CMR 10.00: PERFORMANCE IMPROVEMENT PLANS

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10.01: General Provisions

- (1) Scope and Purpose. 958 CMR 10.00 governs the process and criteria used to require Performance Improvement Plans as authorized in M.G.L. c. 6D, § 10. 958 CMR 10.00 specifies the process for submission, approval, and amendment of Performance Improvement Plans pursuant to M.G.L. c. 6D, § 10, as well as the process for conducting Cost and Market Impact Reviews of Provider Organizations pursuant to M.G.L. c. 6D, § 13(b).
- (2) Effect on Other Law. Neither 958 CMR 10.00 nor any Performance Improvement Plan required by 958 CMR 10.00 shall be construed to relieve any entity of obligations or requirements imposed on it by other state or federal law.

10.02: Definitions

All defined terms in 958 CMR 10.00 are capitalized. As used in 958 CMR 10.00, these terms have the following meaning:

Board. The governing board of the Commission established in M.G.L. c. 6D, §2(b).

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

CHIA-identified Entity. Any Health Care Entity that is identified by the Center under M.G.L. c. 12C, § 18 as an entity whose increase in health status adjusted total medical expense is considered excessive and who threatens the ability of the state to meet the health care cost growth benchmark established under M.G.L. c. 6D § 9.

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

Cost and Market Impact Review. A review conducted by the Commission pursuant to M.G.L. c. 6D § 13 and 958 CMR 7.00: *Notices of Material Change and Cost and Market Impact Reviews* and 10.00.

Executive Director. The Executive Director of the Commission.

Health Care Entity. A clinic, hospital, ambulatory surgical center, physician organization, accountable care organization or payer; provided, however, that physician contracting units with a patient panel of 15,000 or fewer, or which represents providers who collectively receive less than \$25,000,000 in annual net patient service revenue from carriers shall be exempt.

Performance Improvement Plan or PIP. A plan submitted to the Commission by a PIP Entity pursuant to M.G.L. c. 6D, § 10 and 958 CMR 10.00.

PIP Entity. Any CHIA-identified Entity from which the Commission has voted to require a Performance Improvement Plan, but which has neither successfully completed the Performance Improvement Plan nor obtained a waiver from the requirement to implement a Performance Improvement Plan.

PIP Notice. Written notice issued by the Commission pursuant to 958 CMR 10.05 informing a CHIA-identified Entity that the Commission is requiring it to submit a Performance Improvement Plan.

Provider Organization. Any corporation, partnership, business trust, association or organized group of persons, which is in the business of health care delivery or management, whether incorporated or not, that represents 1 or more health care providers in contracting with carriers or third-party administrators for the payments of health care services; provided, that a 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.

10.03: Notice of Identification by the Center for Health Information and Analysis

- (1) The Commission shall provide written notice to each CHIA-identified Entity. Such notice shall state, at a minimum:
  - (a) That the Commission has received notice from CHIA identifying the Health Care Entity under M.G.L. c. 12C, § 18 as an entity whose increase in health status adjusted total medical expense is considered excessive and who threatens the ability of the state to meet the health care cost growth benchmark established under M.G.L. c. 6D, § 9;
  - (b) The data relied upon by CHIA to identify the Health Care Entity under M.G.L. c. 12C, § 18;
  - (c) That the Commission may require a Performance Improvement Plan if, after a review of the factors described in section 958 CMR 10.04(2), the Commission identifies significant concerns about the CHIA-identified Entity's costs and determines that a Performance Improvement Plan could result in meaningful, cost-saving reforms; and
  - (d) If the CHIA-identified Entity is a Provider Organization, that when total health care expenditures exceed the health care cost growth benchmark established under M.G.L. c. 6D, §9 in the previous calendar year, the Commission may conduct a Cost and Market Impact Review of the CHIA-identified Entity if the Commission determines that its performance has significantly impacted or is likely to significantly impact market functioning or the state's ability to meet the benchmark established under M.G.L. c. 6D, §9.
- (2) Such notice may also include requests for additional information from the CHIA-identified Entity or may state that the Commission may request additional information from the CHIA-identified Entity as part of its reviews under 958 CMR 10.04 or 10.16.

10.04: Requirement to File a Performance Improvement Plan

- (1) The Commission may require any CHIA-identified Entity to file a Performance Improvement Plan with the Commission if, after a review of the factors described in 958 CMR 10.04(2), the Commission identifies significant concerns about the CHIA-identified Entity's costs and determines that a Performance Improvement Plan could result in meaningful, cost-saving reforms.
- (2) The Commission shall base its determination whether to require a Performance Improvement Plan on a review of the following factors:
  - (a) Baseline spending and spending trends over time, including by service category;
  - (b) Pricing patterns and trends over time;
  - (c) Utilization patterns and trends over time;
  - (d) Population(s) served, payer mix, product lines, and services provided;
  - (e) Size and market share;

- (f) Financial condition, including administrative spending and cost structure;
  - (g) Ongoing strategies or investments to improve efficiency or reduce spending growth over time;
  - (h) Factors leading to increased costs that are outside the CHIA-identified Entity's control; and
  - (i) Any other factors the Commission considers relevant.
- (3) To evaluate the factors described in 958 CMR 10.04(2), the Commission may request additional information from the CHIA-identified Entity. Prior to any Board vote to determine whether to require a Performance Improvement Plan, the Commission shall provide written notice to the CHIA-identified Entity, an opportunity to review information used by the Commission relative to 958 CMR 10.04(2), and an opportunity to meet with the Executive Director.
- (4) The Commission shall determine whether to require a Performance Improvement Plan by vote of the Board.

#### 10.05: Notice of Requirement to File a Performance Improvement Plan and Public Identification

- (1) The Commission shall provide a PIP Notice to any PIP Entity subsequent to an affirmative vote as described in 958 CMR 10.04(4).
- (2) The PIP Notice shall include, at a minimum:
- (a) The Commission's basis for requiring a Performance Improvement Plan;
  - (b) The timing and process for filing a Performance Improvement Plan under 958 CMR 10.09;
  - (c) The timing and process for filing a request to extend the timing for filing a Performance Improvement Plan under 958 CMR 10.08; and
  - (d) The timing and process for filing a request to waive the requirement to file a Performance Improvement Plan under 958 CMR 10.07.
- (3) The PIP Notice may also include further guidance regarding the form and content of any Performance Improvement Plan submission, as described in 958 CMR 10.09.
- (4) A PIP Entity shall be considered to have received a PIP Notice on the day that the Commission sends the PIP Notice electronically to an officer of the PIP Entity or the day on which the PIP Entity receives the PIP Notice in hard copy, whichever is earlier.
- (5) The Commission's website shall include a list of Health Care Entities required to file a Performance Improvement Plan. Once a Health Care Entity successfully completes the Performance Improvement Plan per 958 CMR 10.13 or obtains a waiver from the requirement to file a Performance Improvement Plan per 958 CMR 10.07, the Commission shall remove the name of the Health Care Entity from such list.

#### 10.06: Timing of Submission

Within 45 days of receiving a PIP Notice, a PIP Entity shall file:

- (1) A proposed Performance Improvement Plan with the Commission pursuant to 958 CMR 10.09; or
- (2) A request for a waiver from the requirement to file a Performance Improvement Plan pursuant to 958 CMR 10.07; or
- (3) A request to extend the timeline for filing a proposed Performance Improvement Plan pursuant to 958 CMR 10.08.

10.07: Waiver from Requirement to File a Performance Improvement Plan

- (1) Requests for a waiver from the requirement to file a Performance Improvement Plan shall be filed in a manner and form prescribed by the Commission.
- (2) The PIP Entity shall submit documentation or supporting evidence to the Commission to support the PIP Entity's request for waiver.
- (3) The Commission may require the PIP Entity to submit any other relevant information it deems necessary in considering the waiver request.
- (4) The Commission may waive the requirement for a PIP Entity to file a Performance Improvement Plan in response to a waiver request in light of all information received from the PIP Entity under 958 CMR 10.04, any additional information submitted under 958 CMR 10.07(2) and (3), and information received or obtained by the Commission, based on a consideration of the following factors:
  - (a) The costs, price, and utilization trends of the PIP Entity over time, and any demonstrated improvement to reduce health status adjusted total medical expenses;
  - (b) Any ongoing strategies or investments that the PIP Entity is implementing to improve future long-term efficiency and reduce cost growth;
  - (c) Whether the factors that led to increased costs for the PIP Entity can reasonably be considered to be unanticipated and outside of the control of the PIP Entity;
  - (d) The overall financial condition of the PIP Entity;
  - (e) A significant difference between the growth rate of potential gross state product and the growth rate of actual gross state product, as determined under section M.G.L. c. 29 § 7H ½; and
  - (f) Any other factors the Commission considers relevant.
- (5) The Commission shall determine whether to waive the requirement to file a Performance Improvement Plan by vote of the Board.
- (6) If the Commission declines to waive the requirement for the PIP Entity to file a Performance Improvement Plan, the Commission shall provide written notice to the PIP Entity stating that its application for a waiver was denied. The PIP Entity shall either file a proposed Performance Improvement Plan within 45 days of receipt of the

notice of denial, or file a request for extension of time to file a proposed Performance Improvement Plan within 15 days of receipt of the notice of denial.

10.08: Extension to File a Performance Improvement Plan

- (1) Requests for an extension to file a Performance Improvement Plan shall be filed in a manner and form prescribed by the Commission.
- (2) When filing a request for an extension, the PIP Entity shall indicate the requested submission deadline for the proposed Performance Improvement Plan.
- (3) The PIP Entity may submit any documentation or supporting evidence to the Commission to support the PIP Entity's request for extension.
- (4) The Commission may require the PIP Entity to submit any other relevant information it deems necessary in considering the extension request.
- (5) The Executive Director may grant an extension of time, up to 45 days, to file a Performance Improvement Plan to provide sufficient time for the creation and submission of a plan that will be reasonably likely to successfully address the underlying cause(s) of the PIP Entity's cost growth.
- (6) Any extension of more than 45 days shall be granted by vote of the Board.
- (7) The Executive Director or Board may deny any extension request or grant an extension, as applicable, for a period of time less than the period requested.
- (8) If the Executive Director or Board declines to extend the timeline for the PIP Entity to file a Performance Improvement Plan, the Commission shall provide written notice to the PIP Entity stating that its request for extension was denied, the reason for the denial, and that the PIP Entity shall file a proposed Performance Improvement Plan within 45 days of receipt of the notice of denial.

10.09: Performance Improvement Plan Proposal

- (1) Proposed Performance Improvement Plans shall be filed in a manner and form prescribed by the Commission.
- (2) Any proposed Performance Improvement Plan shall be developed by the PIP Entity and shall include, at a minimum:
  - (a) Identification of the cause(s) of the PIP Entity's cost growth, with supporting analytic materials as applicable;
  - (b) Specific strategies, adjustments, and action steps the PIP Entity proposes to implement to improve health care spending performance without compromising quality of or access to needed services;

- (c) A proposed timetable for implementing each strategy, adjustment or action step proposed in 958 CMR 10.09(2)(b), with an overall timetable for implementation of 18 months or less;
  - (d) Specific identifiable and measurable expected outcomes, with a timetable for measurement, achievement, and reporting of such outcomes;
  - (e) Proposed process and outcome metrics for evaluating the progress and success or failure of the Performance Improvement Plan;
  - (f) Any requests by the PIP Entity for implementation assistance from the Commission;
  - (g) Any documentation necessary to support any claims or assertions contained in the proposed Performance Improvement Plan;
  - (h) A list of any regulatory reviews or filings that would be necessary to implement components of the Performance Improvement Plan; and
  - (i) Other items as may be identified by the Commission from time to time.
- (3) The PIP Entity may consult with the Commission throughout development of the Performance Improvement Plan to ensure that the criteria of 958 CMR 10.09(2) have been met.

#### 10.10: Performance Improvement Plan Approval

- (1) The Commission shall approve a proposed Performance Improvement Plan by vote of the Board if it determines that the proposed Performance Improvement Plan meets the criteria described in section 958 CMR 10.09(2), is reasonably likely to successfully address the underlying cause(s) of the PIP Entity's cost growth, and has a reasonable expectation that the PIP Entity will be capable of successfully implementing the proposed Performance Improvement Plan.
- (2) Examples of factors the Commission may consider in determining whether to approve a Performance Improvement Plan include:
- (a) Whether the proposed Performance Improvement Plan proposes a strategy or activity that has a reasonable economic, business, or medical rationale with a sufficient evidence base;
  - (b) The scope and likelihood of potential savings and the potential impact on the Commonwealth's ability to meet the health care cost growth benchmark established under M.G.L. c. 6D, § 9;
  - (c) Whether savings and efficiencies associated with the proposed Performance Improvement Plan are likely to continue after the implementation of the Performance Improvement Plan;
  - (d) The extent to which a proposed Performance Improvement Plan carries a risk of negative consequences that would be inconsistent with other policy goals of the Commonwealth (*e.g.*, negative impacts on the quality of care or access to needed services); and
  - (e) Any other factors the Commission determines to be in the public interest.

- (3) The Commission shall consult with other state agencies in the event that a regulatory review by or filing with another state agency would be necessary to implement components of the proposed Performance Improvement Plan.
- (4) If the proposed Performance Improvement Plan is determined to be acceptable and complete, the Commission shall notify the PIP Entity of such determination and may specify reporting requirements and any assistance to be provided by the Commission.
- (5) If the proposed Performance Improvement Plan is determined to be unacceptable or incomplete, the Commission shall notify the PIP Entity of such determination and shall provide additional time, up to 30 days, for resubmission. The Commission shall encourage the PIP Entity to consult with the Commission on criteria that have not been met.

#### 10.11: Performance Improvement Plan Implementation, Reporting and Monitoring

- (1) Upon notice of approval of a proposed Performance Improvement Plan, the PIP Entity shall begin immediate implementation of the Performance Improvement Plan.
- (2) Each PIP Entity implementing a Performance Improvement Plan shall be subject to compliance monitoring and regularly provide both public and confidential reports upon progress as specified in the approved Performance Improvement Plan and as may be otherwise specified by the Commission.
- (3) The Commission shall provide assistance to the PIP Entity in the successful implementation of the Performance Improvement Plan, subject to available capacity and expertise.

#### 10.12: Amendments During Implementation

- (1) The PIP Entity may file proposed amendments to the approved Performance Improvement Plan at any point during implementation. Amendment requests shall be submitted in a manner and form prescribed by the Commission.
- (2) The Commission shall approve significant proposed amendments by vote of the Board. Minor amendments may be approved by the Executive Director with notice to the Commission. The Commission shall provide written notice to the PIP Entity indicating whether a proposed amendment is approved or denied.

#### 10.13: Conclusion of Implementation Period

- (1) Upon conclusion of the implementation period, the PIP Entity shall report to the Commission on the outcome of the Performance Improvement Plan.
- (2) The Commission shall determine whether the Performance Improvement Plan was successful by vote of the Board.



- (3) The Commission may consider the following factors when determining whether a Performance Improvement Plan was successful:
  - (a) Whether and to what extent the PIP Entity has addressed significant concerns about its costs, *i.e.*, by achieving the target outcomes as specified in the Performance Improvement Plan, in accordance with the Commonwealth’s policy goals, including those concerning the cost, quality and accessibility of care;
  - (b) Whether the PIP Entity has fully implemented, in good faith, the strategies, adjustments and action steps of the Performance Improvement Plan;
  - (c) The sustainability of the efficiencies and cost savings of the Performance Improvement Plan;
  - (d) The impact of events outside of the PIP Entity’s control on implementation or cost growth; and
  - (e) Other factors the Commission determines to be relevant.
  
- (4) If the Commission finds the Performance Improvement Plan to be unsuccessful, the Commission may:
  - (a) Extend the implementation timetable of the Performance Improvement Plan, and may request and approve amendments to the Performance Improvement Plan;
  - (b) Require the PIP Entity to submit a new Performance Improvement Plan; or
  - (c) Waive or delay the requirement to file any additional Performance Improvement Plan.

#### 10.14: Confidentiality

Pursuant to M.G.L. c. 6D, § 2A, the Commission shall keep confidential all nonpublic clinical, financial, strategic or operational documents or information provided or reported to the Commission in connection with any Performance Improvement Plan activities authorized under M.G.L. c. 6D, § 10 and 958 CMR 10.00 and shall not disclose the information or documents to any person without the consent of the payer or provider providing or reporting the information or documents, except in summary form in evaluative reports of such activities or when the Commission believes that such disclosure should be made in the public interest after taking into account any privacy, trade secret or anticompetitive considerations. Such confidential information and documents shall not be public records and shall be exempt from disclosure under M.G.L. c. 66, § 10 and c. 4, § 7(26).

#### 10.15: Penalties

- (1) The Commission may assess a civil penalty to a PIP Entity of not more than \$500,000 if it finds that the PIP Entity has:
  - (a) Willfully neglected to file a Performance Improvement Plan, or a request for waiver, within 45 days of the PIP Notice, or within a time period approved through an extension request;

- (b) Failed to file an acceptable Performance Improvement Plan in good faith with the Commission;
  - (c) Failed to implement an approved Performance Improvement Plan in good faith; or
  - (d) Knowingly failed to provide information to the Commission as required by M.G.L. c. 6D, § 10.
- (2) The Commission shall determine whether to assess a penalty by vote of the Board.
- (3) The Commission shall seek to promote compliance with 958 CMR 10.00 and shall only impose a civil penalty as a last resort.
- (4) The Commission shall provide written notice to a PIP Entity of the amount of the penalty, the reason(s) for assessing the penalty, and the right to request a hearing.
- (5) The Commission shall not assess a penalty unless the Commission, through the Executive Director, has first afforded the PIP Entity an opportunity for a hearing in accordance with M.G.L. c. 30A, §10.
- (6) After the hearing, the Commission shall render a written decision and may assess a civil penalty pursuant to 958 CMR 10.15(1).

10.16: Initiation of a Cost and Market Impact Review; Notice

- (1) If the Commission determines that the performance of a Provider Organization identified by the Center under M.G.L. c. 12C, § 18 has significantly impacted or is likely to significantly impact the state’s ability to meet the health care cost growth benchmark established under M.G.L. c. 6D, § 9 or market functioning, the Commission may conduct a Cost and Market Impact Review of that Provider Organization when total health care expenditures exceed the health care cost growth benchmark established under M.G.L. c. 6D, § 9 in the calendar year for which the Provider Organization was identified by the Center.
- (2) To make the determination described in 958 CMR 10.16(1), the Commission may request additional information from the Provider Organization identified by the Center under M.G.L. c. 12C, § 18. Prior to any Board vote to determine whether to initiate a Cost and Market Impact Review pursuant to 958 CMR 10.16(1), the Commission shall provide written notice to the Provider Organization, an opportunity to review information used by the Commission relative to 958 CMR 10.16(1), and an opportunity to meet with the Executive Director.
- (3) The Commission shall determine whether to initiate a Cost and Market Impact Review by vote of the Board.
- (4) The Commission shall provide written notice to any Provider Organization for which it will conduct a Cost and Market Impact Review under 958 CMR 10.16(1).

10.17: Cost and Market Impact Review Process for CHIA-identified Provider Organizations

The process for a Cost and Market Impact Review under 958 CMR 10.16 shall be governed by M.G.L. c. 6D, § 13, and 958 CMR 7.05 through 7.12; and 7.14.

10.18: Severability

If any section or portion of a section of 958 CMR 10.00 or the applicability thereof is held invalid or unconstitutional by any court of competent jurisdiction, the remainder of 958 CMR 10.00 or the applicability thereof to other persons, entities, or circumstances shall not thereby be affected.

REGULATORY AUTHORITY

958 CMR 10.00: M.G.L. c. 6D, §§ 10 and 13.