HEALTH POLICY COMMISSION

Bulletin 2016-01: Interim Guidance for Payers, Providers, and Provider Organizations Relative to Performance Improvement Plans and Cost and Market Impact Reviews; Issued 03/02/16

BULLETIN 2016-01

To: Payers, Providers, and Provider Organizations

From: David M. Seltz, Executive Director, Health Policy Commission

Date: March 2, 2016

Re: Interim Guidance Relative to Payers, Providers, and Provider Organizations Identified by the Center for Health Information and Analysis under section 18 of chapter 12C, Performance Improvement Plans, and Cost and Market Impact Reviews

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Chapter 224 of the Acts of 2012 establishes, in sections 10 and 13 of chapter 6D of the General Laws, authority for the Health Policy Commission (Commission) to take certain actions related to payers, providers, and provider organizations identified by the Center for Health Information and Analysis (CHIA) under section 18 of chapter 12C. Beginning January 1, 2016, the Commission may require any entity identified by CHIA to file a performance improvement plan with the Commission. The Commission may also conduct a cost and market impact review of any provider organization identified by CHIA when total health care expenditures exceed the health care cost growth benchmark in the previous calendar year.

Interim Guidance

Pending adoption of a final regulation, the Commission issues the following guidance to Health Care Entities regarding performance improvement plans and cost and market impact reviews under sections 10 and 13 of chapter 6D. The purpose of the Interim Guidance is to provide direction with respect to the process for submission, approval, and amendment of performance improvement plans, as well as the process for conducting cost and market impact reviews of provider organizations identified by CHIA under section 18 of chapter 12C. This Interim Guidance supplements 958 CMR 7.00 governing the procedures for filing notices of material change with the Commission and the procedures for conducting cost and market impact reviews thereof.

The Commission's final regulation will supersede the requirements of the Interim Guidance. Accordingly, the final regulation may differ from the Interim Guidance.

Pending adoption of a final regulation, the following requirements will be in effect:

1. **Applicability.** This Interim Guidance applies to providers, Provider Organizations, and public and private payers.

2. **Definitions.**

    a. "Health Care Entity" is defined as 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.

    b. "Provider Organization" is defined as 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 heath 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.

3. **Notice of Identification by CHIA**

    a. The Commission shall provide written notice to each Health Care Entity that is identified by CHIA under section 18 of chapter 12C (hereinafter CHIA-identified Health Care Entities) as an entity whose increase in health status adjusted total medical expense is considered excessive and who threaten the ability of the state to meet the health care cost growth benchmark.

    b. Such notice shall state the data relied upon by CHIA for identification of the Health Care Entity and shall also advise the Health Care Entity that the Commission is evaluating the performance of the Health Care Entity, the Commission may request additional information from the Health Care Entity to evaluate such performance, and, it may require a performance improvement plan if, after a review of the factors described in section 4(b), the Commission identifies significant concerns about the Health Care Entity's costs and determines that a performance improvement plan could result in meaningful, cost-saving reforms.

    c. Such notice shall also advise all Provider Organizations identified by CHIA (hereinafter CHIA-identified Provider Organizations) that when total health care expenditures exceed the health care cost growth benchmark in the previous calendar year, the Commission may conduct a cost and market impact review of any CHIA-identified Provider Organization if the Commission determines that a its performance has significantly impacted or is likely to significantly impact

market functioning or the state's ability to meet the health care cost growth benchmark (see sections 15 and 16).

4. Notice of Requirement to File a Performance Improvement Plan.

a. The Commission may require any CHIA-identified Health Care Entity to file a performance improvement plan with the Commission if, after a review of the factors described below in section 4(b), the Commission identifies significant concerns about the Health Care Entity's costs and determines that a performance improvement plan could result in meaningful, cost-saving reforms.

b. The Commission shall base its determination whether to require a performance improvement plan on a review of factors, including, but not limited to:
   i. Baseline spending and spending trends over time, including by service category;
   ii. Pricing patterns and trends over time;
   iii. Utilization patterns and trends over time;
   iv. Population(s) served, product lines, and services provided;
   v. Size and market share;
   vi. Financial condition, including administrative spending;
   vii. Ongoing strategies or investments to improve efficiency or reduce spending growth over time; and
   viii. Factors leading to increased costs that are outside the Health Care Entity's control.

c. The Commission shall determine whether to require a performance improvement plan by vote of six members.

d. The Commission shall provide written notice to any Health Care Entity from which it requires a performance improvement plan (hereinafter PIP Notice).

e. The PIP Notice shall state:
   i. The Commission's basis for requiring a performance improvement plan;
   ii. The timing and process for filing a performance improvement plan (see sections 5 and 8 below); and
   iii. The timing and process for filing a request to extend the timing for filing a performance improvement plan or to waive the request to file a performance improvement plan (see sections 6 and 7 below).

f. The PIP Notice may also include further guidance regarding the form and required elements of any performance improvement plan submission, as described below in section 8.

g. All Health Care Entities required to file a performance improvement plan shall be identified on the Commission's website.

5. Timing and Instructions for Submission of a Performance Improvement Plan or Request for a Waiver or Extension.

a. Upon receiving a PIP Notice, a Health Care Entity shall either:
   i. File a proposed performance improvement plan with the Commission within 45 days of receipt of a PIP Notice;
   ii. File a request for a waiver from the requirement to file a performance improvement plan within 45 days of receipt of a PIP Notice; or
   iii. File a request for an extension of time to file a performance improvement plan or a request for a waiver within 15 days of receipt of a PIP Notice.

b. Proposed performance improvement plans and requests for waiver or extension of time must be submitted either electronically or by mail to:

Health Policy Commission
50 Milk Street, 8th Floor
Boston, MA 02109
HPC-Notice@state.ma.us

6. Requests for Waivers

a. The Commission may waive the requirement for a Health Care Entity to file a performance improvement plan in response to a waiver request in light of all information received from the Health Care Entity, based on a consideration of the following factors:
   i. The costs, price and utilization trends of the Health Care Entity over time, and any demonstrated improvement to reduce health status adjusted total medical expenses;
   ii. Any ongoing strategies or investments that the Health Care Entity is implementing to improve future long-term efficiency and reduce cost growth;
   iii. Whether the factors that led to increased costs for the Health Care Entity can reasonably be considered to be unanticipated and outside of the control of the entity (e.g., pharmaceutical expenses and medical device expenses);
   iv. The overall financial condition of the Health Care Entity;
   v. 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 7H 1/2 of chapter 29; and
   vi. Any other factors the Commission considers relevant.

b. The Health Care Entity may submit any documentation or supporting evidence to the Commission to support the Health Care Entity's request for waiver.

c. The Commission may require the Health Care Entity to submit any other relevant information it deems necessary in considering the waiver request. Such information shall be made public at the discretion of the Commission.

d. The Commission shall determine whether to waive the requirement to file a performance improvement plan by vote of six members.

e. If the Commission declines to waive the requirement for the Health Care Entity to file a performance improvement plan, the Commission shall provide written notice to the Health Care Entity stating that its application for a waiver was denied. The Health Care 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.

7. Requests for Extension

a. The Executive Director may extend the timeline for filing 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 Health Care Entity's cost growth.

b. The Executive Director may also extend the timeline for filing a request for a waiver of the requirement to file a performance improvement plan to provide the Health Care Entity adequate time to prepare their submission.

c. When filing a request for an extension, the Health Care Entity shall indicate the requested length of extension and whether the request is to extend the time to file 1) a proposed performance improvement plan, or 2) a waiver of the requirement to file a performance improvement plan.

d. The Health Care Entity may submit any documentation or supporting evidence to the Commission to support the Health Care Entity's request for extension.

e. The Commission may require the Health Care Entity to submit any other relevant information it deems necessary in considering the extension request. Such information shall be made public at the discretion of the Commission.

f. If the Executive Director declines to extend the timeline for the Health Care Entity to file a performance improvement plan, the Commission shall provide written notice to the Health Care Entity stating that its application for extension was denied and that the Health Care Entity must file a proposed performance improvement plan or request for waiver within 45 days of receipt of the notice of denial.

8. Performance Improvement Plan Proposals.

a. A proposed performance improvement plan shall be developed by the Health Care Entity and shall include, but need not be limited to:
    i. Identification of the cause(s) of the Health Care Entity's cost growth, with supporting analytic materials as applicable;
    ii. Specific strategies, adjustments, and action steps the Health Care Entity proposes to implement to improve health care spending performance;
    iii. Specific identifiable and measurable expected outcomes, with a timetable for measurement, achievement, and reporting of such outcomes;
    iv. Any requests by the Health Care Entity for implementation assistance from the Commission;
    v. A timetable for implementation of 18 months or less; and
    vi. Any documentation necessary to support any claims or assertions contained in the proposal.

b. The Commission may provide more specific instructions for each of the above listed proposal elements in the PIP Notice.

c. Pursuant to section 13 below, the Commission shall not disclose confidential information or documents provided in connection with a proposed performance improvement plan, except that the Commission may publicly report upon the proposed performance improvement plan in summary form.

9. Approval or Disapproval of a Proposed Performance Improvement Plan.

a. The Commission shall determine whether to approve a proposed performance improvement plan by vote of six members if it meets the criteria described in section 8 above, and if it is reasonably likely to successfully address the underlying cause(s) of the Health Care Entity's cost growth.

b. If the proposed performance improvement plan is determined to be acceptable and complete, the Commission shall notify the Health Care Entity of such determination and may specify reporting requirements and/or requested assistance from the Commission that will be included in the approved performance improvement plan.

c. If the proposed performance improvement plan is determined to be unacceptable or incomplete, the Commission shall notify the Health Care Entity of such determination and shall provide additional time, up to 30 days, for resubmission. The Commission shall encourage Health Care Entities to consult with the Commission on criteria that have not been met.

10. Implementation: Reporting and Monitoring.

a. Upon notice of approval of a proposed performance improvement plan, the Health Care Entity shall begin immediate implementation of the performance improvement plan.

b. Each Health Care Entity implementing a performance improvement plan shall be subject to compliance monitoring, and required to regularly provide both public and confidential reports upon progress as specified in the approved performance improvement plan.

c. The Commission shall provide assistance to the Health Care Entity during implementation as specified in the approved performance improvement plan.

11. Amendments during Implementation.

a. Health Care Entities may file proposed amendments to the approved performance improvement plan at any point during implementation. Amendment requests must be submitted electronically or by mail to the address listed in section 5.

b. The Commission shall determine whether to approve significant proposed amendments by vote of six members. Minor amendments may be approved by the Executive Director with notice to the Commission. The Commission shall provide written notice to the Health Care Entity indicating whether a proposed amendment is approved or denied.

12. Conclusion of Implementation Period.

a. Upon conclusion of the implementation period, Health Care Entities shall report to the Commission on the outcome of the performance improvement plan. The Commission may publicly report on the outcome in summary form.

b. The Commission shall determine whether the performance improvement plan was successful by vote of six members.

c. If the Commission finds the performance improvement plan to be unsuccessful, the Commission may:
    i. Extend the implementation timetable of the performance improvement plan, and may request and approve amendments to the performance improvement plan;
    ii. Require the Health Care Entity to submit a new performance improvement plan; or
    iii. Waive or delay the requirement to file any additional performance improvement plans.

d. If the Commission determines that implementation was successful, the identity of the Health Care Entity shall be removed from the Commission's website.

13. Confidentiality.

a. Unless otherwise specified by section 10 of chapter 6D, the Commission shall keep confidential all nonpublic clinical, financial, strategic, or operational documents or information provided to the Commission in connection with performance improvement plan activities, pursuant to section 2A of chapter 6D.

b. The Commission shall not disclose confidential information or documents without the consent of the Health Care Entity providing the information to the Commission, except in summary form in evaluative reports, as referenced in subsections 6(c), 8(c), 10(c), and 12(a), 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.

c. The confidential information and documents provided to the Commission in connection with performance improvement plan activities shall not be public records and shall be exempt from disclosure under section 10 of chapter 66 and section 7(26) of chapter 4.

14. Penalties.

a. The Commission may assess a civil penalty to a Health Care Entity of not more than $500,000 if it finds that the Health Care Entity has:
    i. 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;
    ii. Failed to file an acceptable performance improvement plan in good faith with the Commission;
    iii. Failed to implement the performance improvement plan in good faith; or
    iv. Knowingly failed to provide information to the Commission as required by section 10 of chapter 6D.

b. The Commission shall determine whether to assess a penalty by vote of six members.

c. The Commission shall provide written notice to a Health Care Entity of the amount of the penalty, the reason(s) for assessing the penalty, and the right to request a hearing.

d. The Commission shall not assess a penalty unless the Commission, through the Executive Director, has first afforded the Health Care Entity an opportunity for a hearing in accordance with section 10 of chapter 30A.

e. After the hearing, the Commission shall render a written decision and may assess a civil penalty pursuant to section 14(a) above.

f. The Commission shall seek to promote compliance with this section and shall only impose a civil penalty as a last resort.

15. Notice of a Cost and Market Impact Review.

a. If the Commission determines that a CHIA-identified Provider Organization's performance has significantly impacted or is likely to significantly impact the state's ability to meet the health care cost growth benchmark or market functioning, the Commission may conduct a cost and market impact review of that CHIA-identified Provider Organizations when total health care expenditures exceed the health care cost growth benchmark in the previous calendar year.

b. The Commission shall provide written notice to any CHIA-identified Provider Organization for which it will conduct a cost and market impact review.

16. Cost and Market Impact Review Process for CHIA-Identified Provider Organizations.

a. The process for a cost and market impact review of a CHIA-identified Provider Organization shall be governed by section 13 of chapter 6D, and 958 CMR 7.05 – 7.12; and 7.14.