

# PROVIDERS' COUNCIL

August 22, 2016

To: Kristen Lepore, Secretary  
Gary J. Lambert, Assistant Secretary for Operational Services  
Executive Office for Administration and Finance

From: Michael Weekes, President/CEO

Re: Comments on proposed amendments to 808 CMR 1.00: *Compliance, Reporting and Auditing for Human and Social Services*

Thank you for giving the Providers' Council, our members and other community-based organizations the opportunity to submit comments regarding amendments to 808 CMR 1.00, *Compliance, Reporting and Auditing for Human and Social Services*. We appreciate the time and preparation that went into the proposed amendments, and we thank the Baker Administration – and in particular, the Executive Office for Administration and Finance – for engaging human services stakeholders through the regulatory review process after Governor Baker signed Executive Order #562 on March 31, 2015.

The Providers' Council is the largest statewide association of community-based human services organizations that provide an array of services to one-in-ten Massachusetts residents on behalf of the Commonwealth. Since the mid-1970s, providers have built community supports that have been transformative in protecting the lives of many residents, advancing our state's system of care and ensuring hundreds of thousands of state residents receive critical supports.

## **Comments on 808 CMR 1.03 (7), *Surplus Revenue Retention***

Last September, the Providers' Council surveyed our statewide membership and sent a letter to Secretary Lepore regarding the regulations that were most mentioned as in need of revision. We are pleased to see that one of the items we referenced in that letter – the Not-for-Profit Contractor Surplus Revenue Retention section (808 CMR 1.03 (7)) – would see significant changes under the proposed amendments. In our initial letter, we wrote:

*“Both the 5 percent and 20 percent cap are actually harmful to the Commonwealth. The caps reduce an incentive for providers to exercise cost-savings initiatives; jeopardize the availability for providers to have cash on hand to meet needs for major items; hamper the ability of human service providers to borrow funds and maintain compliance with lending covenants; penalize long-term providers that have had consistent, strong management;*

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*and treat for-profit firms more favorably than nonprofit providers that, in many cases, may be doing similar work.”*

The Council and our members are appreciative that the Executive Office for Administration and Finance has proposed changing the 5 percent annual cap on Surplus Revenue Retention to a 20 percent annual cap. Our members are also appreciative that the proposed amendment would abolish the 20 percent lifetime cap on Surplus Revenue Retention.

These proposed amendments to 808 CMR 1.03 (7) will allow human services organizations to remain viable. The Surplus Revenue Retention regulation had been put into place nearly 20 years ago and had never been updated, meaning that providers who retained only 1 percent per year were bumping up against the 20 percent cap. The elimination of this lifetime cap will increase the potential for a stronger human services system in the Commonwealth.

**Comments on 808 CMR 1.05 (21), *Non-reimbursable Costs/Litigation Costs***

We are not sure why language reading “*investigations or*” was added to this section.

The language in this section is unclear, and we are unsure of the intent. Providers require financial resources to protect their organizations and preserve essential services to those for whom they are entrusted to care. These organizations are primarily funded through state contracts, and they serve – almost exclusively – individuals who are referred and/or eligible for the program. More often than not, these investigations do not materialize into anything serious and may be an issue of communication or coordinating appropriate services with a service population of increasingly challenging behaviors and needs. While credible complaints may require an investigation, it is unreasonable to expect providers to fundraise for this reasonable cost of business. It seems under this language that any costs to comply with the state’s investigation – regardless of the circumstances – would be non-reimbursable, and this is a significant and unfair change for the human services sector.

We ask that the change in language proposed at 808 CMR 1.05 (21) be removed.

***Other Issues***

Our letter sent to Secretary Lepore in September 2015 also mentioned two other issues in which our members continue to have a great interest.

***UFR*** – We are pleased that a workgroup is currently meeting with the Executive Office of Health and Human Services to discuss the Uniform Financial Statements and Independent Auditor’s Report (UFR). We have repeatedly questioned the purpose of the UFR and, at a minimum, we recommend the document be changed to improve usability and reduce costs. EOHHS has used it as a planning document

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for setting rates for payments for human and social services, but the UFR itself fails to capture the true market costs that providers may incur in the business of providing services. The document also does not predict the cost necessary to continue recruiting, developing and retaining talent in an increasingly competitive environment.

The UFR is, at best, an auditing tool to determine what was spent. Yet even then, providers must pay large fees to obtain certified financial audits that determine what was spent and if it was spent in accordance with generally accepted accounting principles (GAAP) and then pay an additional fee to have the UFR completed by an auditing firm.

**Ready Payments** – Finally, we noted that community-based human services organizations want Ready Payments (815 CMR 3.00) to remain codified in the Code of Massachusetts Regulations. Further, we stated the request that the Executive Office of Health and Human Services remind its state agencies that they can – and should – use Ready Payments to ensure human services organizations are receiving appropriate and timely funding.

Ready Payments are critical for some organizations, and in many cases, have provided fiscal solvency so organizations – which sometimes have a limited amount of cash on hand – can provide essential services without disruptions. The state's examination of our sector's financial health determined it to be risky with 60 percent of providers having less than one-month's cash at year-end. We hope the Executive Offices of Health and Human Services and for Administration and Finance will ensure Ready Payments remain mandated in regulation.

## **Closing**

Again, the Providers' Council appreciates the efforts of the Operational Services Division and the Executive Office for Administration and Finance in revising the regulations at 808 CMR 1.03 (7) to change the annual cap on Surplus Revenue Retention from 5 percent to 20 percent and to eliminate the lifetime cap on Surplus Revenue Retention.

Additionally, we would be happy to meet with you to discuss the proposed change to language in 808 CMR 1.05 (21) and provide additional explanation as to why this and other concerns related to the UFR and Ready Payment are important.

On behalf of our collective membership and the human services sector, thank you for your continued efforts on the *A Clearer Code* regulation reform project and Executive Order #562. We appreciate your consideration of our proposed reforms, and we look forward to working with you closely in the future to build a stronger system of care across the Commonwealth for all the state's residents.

CC: Marylou Sudders, Secretary- Executive Office of Health and Human Services