PROVIDERS' COUNCIL

September 1, 2015

Secretary Kristen Lepore
Executive Office of Administration & Finance
State House, Room 373
Boston, MA 02133

Dear Secretary Lepore:

The Providers' Council, the state's largest association of community-based human services organizations, is happy to submit the following regulations for your review, pursuant to Governor Charlie Baker's Executive Order #562.

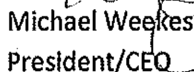
The Council surveyed its statewide membership on which regulations in the Code of Massachusetts Regulations (CMR) needed to be updated, revised or eliminated. We propose that the state implement a clearinghouse for all new regulations and policies before implementation. In addition, we have included detailed information about the top three regulations that were referenced by our membership; we also intend to submit this information through the Executive Office of Administration & Finance (ANF) website. The regulations are:

- 808 CMR 1.00 – The Uniform Financial Statements and Independent Auditor's Report (UFR)
- 808 CMR 1.03 (7) – Not-for-Profit Contractor Surplus Revenue Retention
- 815 CMR 3.00 – Ready Payment System

In the attached document, the Council attempted to mirror the information that ANF seeks on its website from those individuals or groups submitting regulations for review. We have included the CMR numbers, agencies associated with the regulation, the regulatory issue or observation and several suggestions or recommendations for easing regulatory compliance. The Council and our members would be happy to meet with you or your staff in more detail about any of these regulations.

The human services community thanks you for your careful review of these three regulations. We look forward to speaking with you more in the near future about these regulations and others and their impact on the human services sector.

Sincerely,



Michael Weekes
President/CEO

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

Providers' Council • Human Services Providers' Charitable Foundation, Inc. • The Caring Force
88 Broad Street, Fifth Floor • Boston, MA 02110 • p:617.428.3637 • f:617.428.1533 • e:info@providers.org

Company Information:

Name:	Michael Weekes
Company:	Providers' Council
Address:	88 Broad Street, Fifth Floor Boston, MA 02110
Phone:	617.428.3637
Email:	mweekes@providers.org

Regulatory process and need for a clearinghouse

The Providers' Council has a broad membership of human service providers that have financial arrangements with a diverse range of state funding sources, including the Executive Office of Health and Human Services (including MassHealth), the Executive Office of Education and other funding and regulatory bodies. Providers can often be negatively affected by state regulations or policies that may be burdensome, costly, and in some cases, considered duplicative – or in opposition to – other mandates.

For these reasons, we join in the call for a state clearinghouse for all proposed regulations and policies to determine their utility, their cost and if they conflict with an already existing regulation or policy. We suggest an oversight authority be appointed as the clearinghouse to analyze all proposed regulations and policies; that clearinghouse could determine the necessity, potential conflicts and any added cost to community-based human services providers.

For example, the Department of Youth Services and the Department of Children and Families each have their own runaway policies, and these policies are different. We recommend if one state agency or secretariat is proposing a regulation or policy, it should be vetted through a clearinghouse to ensure that a similar regulation or policy does not already exist at another agency or secretariat for a similar service population. If another regulation or policy exists, the state agency should adopt that regulation or policy and ensure that one policy can cover both state agencies.

Furthermore, existing regulations should have a similar and periodic review. While the Chapter 257 rate-setting process is intended to review any new unfunded mandates, the proposed clearinghouse would examine the programmatic, operational and financial impacts of any new regulations or policies.

Our members, however, have already identified three major areas of concern with current state regulations. Below, we have listed the regulation, the state agency with which it is affiliated, the regulatory issue or observation and suggestions for easing regulatory compliance.

Regulations:

1. **808 CMR 1.00 – The Uniform Financial Statements and Independent Auditor's Report (UFR)**

Please list the agency or agencies affiliated with this regulation:

The agencies affiliated with this regulation include the Executive Office of Health and Human Services.

Describe the regulatory issue or observation:

The Uniform Financial Statements and Independent Auditor's Report (UFR) is a uniform reporting system, established by the Division of Purchased Services (DPS), consisting of basic financial statements prepared and audited in accordance with generally accepted accounting principles (GAAP) and generally accepted government auditing standards (GAGAS), supplemental schedules and other information as deemed necessary.

Our members repeatedly question the purpose of the UFR and whether the document needs to be adjusted. Some funding agencies have historically used it as a planning document to set rates, but it fails to capture the true market costs.

For example, some of our members employ human services social workers, and they compete in a market with the state (the largest employer of social workers) and the health care community (including hospitals) to recruit and retain these employees. Yet the experiences of neither the state nor hospitals are taken into account when setting benchmark salaries for human services social workers.

The UFR, therefore, helps state agencies set rates but does so with some rates that have been depressed for more than 20 years and fail to provide for competitive wages that would attract the "best and brightest" to our provider community. Setting rates is not the intended purpose of the UFR; if it is used for this purpose, it is likely harmful to the human service sector.

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 GAAP. Additionally, provider auditors check expenditures against 808 CMR 1.00, which is also done by the Operational Services Division when they conduct their own UFR reviews. We truly feel the usefulness of the UFR as a planning document is nebulous, and as an auditing tool, too expensive and unnecessary.

The Providers' Council and our members have long worked with state government to make updates and improvements to the UFR. There still is, however, much work to be done to improve this complicated, burdensome and outdated document. There are several ways the state could simplify the UFR, making it easier for providers to understand and complete while also making it more useful for the state.

For example, one positive change recommended by providers for FY '15 was a one-time waiver that allowed them to report all programs with the same Massachusetts Management Accounting and Reporting System (MMARS) code together. By consolidating the MMARS code into one, providers were

allowed to consolidate all expenses for the entire code into one program for FY '15. Some organizations that had 20 programs with the same MMARS code previously had to report each program's expenses separately; the waiver meant they could now report all the expenses at once through the same code. This is simply one small change that would make a big different to providers if the state adopted this on a permanent basis rather than as a waiver.

Another example of how the document is outdated involves the section of the UFR that compares budgets to actual costs is superfluous; this section should be eliminated. The majority of human services programs are now priced under Chapter 257, and the state is complying to update the remaining services. Providers, therefore, do not have budgets that they themselves have negotiated. The UFR now, in many ways, no longer applies to the way providers do business in the current funding environment.

The UFR could also be improved if this massive document was sent to organizations annually with pre-populated information. It is the exception for organizations' names, program names, codes, locations or other information change. We would encourage the state to pre-populate this information in the future. Not only would pre-populating this information reduce the reporting burden, but it would also reduce the possibility of clerical errors being added with repeated data entry.

Suggestions for easing regulatory compliance:

The Providers' Council and representatives of our Business Practices Committee seek an audience with EOHHS and the Executive Office of Administration & Finance – specifically the Operational Services Division – to discuss the ways the Uniform Financial Statements and Independent Auditor's Report can be made more user friendly and useful for both providers and the state.

At one point, the state had a workgroup examining changes to the UFR, and we were advised by EOHHS that the state is seriously considering changes to the document. The Council and our members hope to either join those conversations that are already happening with a group examining the UFR or begin a discussion with EOHHS and OSD about how the document can be improved and updated to reflect the current business environment in which providers are working.

2. 808 CMR 1.03 (7) – Not-for-Profit Contractor Surplus Revenue Retention

Please list the agency or agencies affiliated with this regulation:

The agencies affiliated with this regulation include the Executive Office of Health and Human Services.

Describe the regulatory issue or observation:

The Not-for-Profit Contractor Surplus Revenue Retention provision of 808 CMR 1.03, says, in part, the following:

"If, through cost savings initiatives implemented consistent with programmatic and contractual obligations, a non-profit Contractor accrues an annual net surplus from the revenues and expenses

associated with services provided to Departments which are subject to 808 CMR 1.00, the Contractor may retain, for future use, a portion of that surplus not to exceed 5% of said revenues. The cumulative amount of a Contractor's surplus may not exceed 20% of the prior year's revenues from Departments."

The Providers' Council and our members feel this regulation, which was put into place by the state nearly 20 years ago, is outdated and unnecessary. We are unsure why the state has maintained this provision for so long.

Due in part to just the simple passage of time, this cumulative limit of a 20 percent "lifetime" cap has become a major problem for providers. While the state has a 5 percent annual cap – ensuring no provider would have more than a 5 percent surplus in any one year – a provider who averaged even a modest 1 percent surplus per year from when the state issued this regulation has now reached its cap. We challenge the rationale for this cap: Why is our sector the only major vendor in the state with an annual regulatory cap of 5 percent? We would argue that as long as any savings are directed toward state-supported activities in Massachusetts and not for outside matters, then the cap should be lifted. In addition, we believe the ostensibly lifetime 20 percent cap on Surplus Revenue Retention is counterproductive.

Existing language already brings the 20 percent cap into conflict with ordinary experiences. The regulation states that the "...cumulative amount of a Contractor's surplus may not exceed 20% of the prior year's revenues from Departments." We work in a field where, through no fault of a provider, revenue shifts from year-to-year and funding can decrease as a result of a state agency's funding level, a change in program models and/or switching funding to a non-purchase-of-service source, such as MassHealth. Essentially, if the base number has a unforeseen, radical change, it could adversely affect the calculation.

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 services providers to borrow funds and maintain compliance with lending covenants;
- Penalize long-term providers that have had consistent, strong management; and
- Treat for-profit firms more favorably than nonprofit providers that, in many cases, may be doing similar work.

We recognize that the Operational Services Division may want to maintain the 5 percent cap on annual surplus revenue retention, but the state should examine eliminating both caps – or at the very least, the 20 percent cap.

Simply put, providers who do not earn any reserve over time become less viable. Those who do realize a modest surplus over expenses are able to increase their financial health and operate more responsibly with a small cushion. We want providers to have the right incentives for managing their revenues and expenses as effectively as possible. When providers who have only retained 1 percent per year are now

bumping up against the 20 percent cap, it is certainly time to remove the outdated regulation. Furthermore, we know from the state's 2007 "Financial Health of Providers in the Massachusetts Human Service System" nearly *60 percent of providers* have cumulative deficits on their Commonwealth activities and almost *one-third of providers* experience organization-wide deficits each year.

Suggestions for easing regulatory compliance:

The Providers' Council urges the Executive Office of Health and Human Services , the Executive Office of Administration & Finance and the Operational Services Division to eliminate the 5 percent and 20 percent cap provision present in 808 CMR 1.03 (7). This provision has a net negative impact on the Commonwealth and the most vulnerable residents from whom we have been asked to care and it should be eliminated to create a stronger human services system.

3. 815 CMR 3.00 – Ready Payment System

Please list the agency or agencies affiliated with this regulation:

The agencies affiliated with this regulation include the Executive Office of Health and Human Services.

Describe the regulatory issue or observation:

As noted above, Ready Payments are codified in state finance law (815 CMR 3.00).

At the Executive Office of Health and Human Services, a prior administration had strongly encouraged its agencies to eliminate the practice of Ready Payments. The state never reached out to the Providers' Council or our community-based human services providers to discuss how this change would affect the sector or the most vulnerable residents to whom we provide services. It is our express wish that Ready Payments remain codified in the Code of Massachusetts Regulations and that the Executive Office of Health and Human Services reminds 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 this sector. As EOHHS itself noted in its 2007 study on the sector's financial health:

1. One-third of providers have over 45 days of unpaid receivables;
2. Sixty percent of providers have less than one month cash on hand at year end; and
3. Almost half of providers do not generate sufficient cash to pay for operations.

Ready Payments, in many cases, have provided financial solvency so organizations can continue to provide essential services without disruptions. We do not know of any compelling reason for the state to not pay legitimate expenses on time and, therefore, we are concerned about these developments that recently took place at EOHHS.

In fact, a number of agencies approached Ready Payments in different ways at the end of last year.

1. The Department of Developmental Services continued Ready Payments in FY '15, but the Department of Mental Health decided to drop them.
2. The Department of Youth Services had long, protracted discussions with our members about Ready Payments until the agency finally agreed to retain them.
3. It is unclear about the status of Ready Payments at other agencies.

We surveyed our statewide membership at the end of 2014 to determine the level of importance for Ready Payments to the human services sector. More than 80 percent of providers we surveyed said the elimination of Ready Payments would have an adverse fiscal impact on their organization. At least half of providers stated they would need to extend their line of credit to meet payroll if the state eliminates Ready Payments.

The discrepancies in the ways agencies within EOHHS use Ready Payments and the directive from a prior administration to eliminate Ready Payments is extremely concerning to the Providers' Council and our members. If Ready Payments were eliminated, some large providers may be able to eventually recover and survive, though their costs of credit, reimbursed with additional state funds, would likely increase. Additionally, removing this payment system would destabilize midsize and smaller providers that are also providing high-quality services to our Commonwealth's most vulnerable residents. At worst, programs may not be able to meet payroll obligations and could be forced to lay off staff or close, thereby forcing clients and consumers to confront service disruptions.

Suggestions for easing regulatory compliance:

The Providers' Council and our members would like EOHHS and the Executive Office of Administration and Finance to protect the regulations at 815 CMR 3.00 that codify Ready Payments in the state code. They are necessary for the community-based human services sector, and we hope EOHHS and EOAF will ensure Ready Payments remain mandated in regulation. The fact of the matter is that Ready Payment is essentially timely payments that help organization's cash flow and reduce their state reimbursed expense of interest payment should loans be necessary. Providers and the state should both appreciate that funding does not have to be redirected from client and consumer services to unnecessary administrative costs.