

# RBPO - FAQ

## Frequently Asked Questions

Massachusetts Division of Insurance

### Questions and Answers - REVISED August, 2015 Applications for Risk Certificate Waivers and Risk Certificates to meet the requirements of 211 CMR 155.00 and Filing Guidance Notice 2015-C

During the informational sessions that the Division of Insurance has held recently with interested providers, a number of common inquiries were raised. The Division is issuing this document so that those who may apply for the Risk Certificate Waiver (due to be filed by August 31, 2015) or Risk Certificate (due to be filed by November 15, 2015) can find answers to commonly asked questions regarding the application process.

The Division of Insurance intends to supplement the material included in this document on a periodic basis and will update the date listed to reflect when the questions were last updated. If you have any questions about the attached document, please consider sending an e-mail to [DOI.RBPO@state.ma.us](mailto:DOI.RBPO@state.ma.us).

**DISCLAIMER: The following questions and answers are provided for general information only, do not purport to be legal advice, and are not intended to be legally binding on the Commissioner of Insurance or Division of Insurance in a particular case or circumstance. Questions involving interpretation of the laws of the Commonwealth of Massachusetts, and regulation 211 CMR 155.00 and Filing Guidance Notice 2015-C in particular, and your legal rights and obligations should be addressed to an attorney.**

#### RISK CERTIFICATE WAIVERS

##### **1. Risk Certificate Waiver Application: March 1, 2016 through February 28, 2017 Term**

Under Chapter 176T and 211 CMR 155.05(4), an RPBO may apply for a Risk Certificate Waiver if it wishes to demonstrate that its Alternative Payment Contracts do *not* contain “significant” Downside Risk. The burden is on the applicant to submit sufficient information to the Division to demonstrate that its existing or expected arrangements to manage the treatment of a group of patients according to the terms of one or more Alternative Payment Contracts do not contain significant Downside Risk, and it is within the Commissioner’s discretion as to whether to grant or deny any application for a Risk Certificate Waiver. In 2014, Risk Certificate Waivers were issued to all RPBO applicants that had NPSR of *less than* \$15,000,000. The granting of such automatic risk certificate waivers was a temporary measure and was limited *solely* to waivers issued for the March 1, 2015 annual term. There is *no* similar measure in place for Risk Certificate Waivers for the March 1, 2016 annual term.

- a. What are some of the key factors in determining whether an RBPO contains “significant” downside risk?

For *all* Risk Certificate Waiver applications, the key factors that will be weighed by the Division to determine whether the RBPO's Alternative Payment Contracts contain "significant" Downside Risk include the following:

- The total amount of the applicant's net patient services revenue ("NPSR"), where NPSR is defined as the total dollar amount of a Provider Organization's charges for services rendered in a Fiscal Year, less any contractual adjustments;
- The amount of the applicant's NPSR that is subject to Downside Risk;
- The percentage of the RBPO's total NPSR that is subject to Downside Risk;
- The total maximum loss that the RBPO would be subject to through Alternative Payment Contracts subject to Downside Risk; and
- The maximum loss that the RBPO would be subject to through Alternative Payment Contracts subject to Downside Risk as a percentage of its total NPSR.

Where an RBPO can demonstrate that it has *only* a small proportion of its revenue derived from health services provided under Alternative Payment Contracts, and *only* a small percentage of the payments that it receives under those Alternative Payment Contracts contain Downside Risk, it is likely that the RBPO's Downside Risk would not be found to be "significant." For example, under most circumstances the Commissioner is likely to conclude that an RBPO's Downside Risk would not be considered to be significant where an RBPO can demonstrate through its most recently audited financial statements that the revenue from its Alternative Payment Contracts with Downside Risk account for less than 5% of the RBPO's NPSR *and* the RBPO has the net worth – where "net worth" is defined to be the RBPO's assets less its liabilities – sufficient to fund the maximum losses from its Alternative Payment Contracts with Downside Risk.

b. When reporting a provider organization's NPSR, should it only reflect revenue from contracts that have downstream risk?

No, it is NPSR from all carriers, public payers and third party administrators.

c. When reporting a provider organization's NPSR, should the revenue include the applicant's NPSR only or should it include the applicant's NPSR, as well as the NPSR for all the subcontracting Provider Organizations for which the applicant coordinates contracts?

The applicant should report an NPSR that includes the revenue generated by the RBPO and the revenue generated by all subcontracting RBPOs for which the RBPO coordinates contracts.

d. How should RBPOs who act as "messenger model" or "pass-through model" RBPOs where the Downside Risk and revenue is passed through to subcontracting independent doctors report NPSR? (The Division has heard that such RBPOs cannot collect NPSR information from each of its subcontracting independent doctors.)

The "messenger model" or "pass-through model" RBPO should make its best efforts to demonstrate the number of subcontracting providers and its collective NPSR. The Division will expect that the RBPO applicant submit all the other material required under 211 CMR 155.00 and will review accordingly.

## **2. Need to Apply for a Risk Certificate Waiver or a Risk Certificate**

- a. If my Provider Organization only has Downside Risk Arrangements with Public Health Care Payers, does my Provider Organization need to submit a Risk Certificate Waiver application or Risk Certificate application?

If your Provider Organization *only* has Downside Risk Arrangements involving Medicare Advantage plans, there is no need to submit any such applications to the DOI. If however, your Provider Organization intends to enter into a Downside Risk Arrangement with Public Health Care Payers involving other than Medicare Advantage, such as the Medicaid Program established in Chapter 118E, or with any Carrier or entity that contracts with the Medicaid Program of the Commonwealth Health Insurance Connector Authority to pay or arrange for the purchase of health care services on behalf of individuals enrolled in certain health coverage programs, then it should submit a Risk Certificate Waiver application or a Risk Certificate application prior to entering into or renewing Downside Risk Arrangements.

- b. If an RBPO goes through another RBPO which coordinates all Alternative Payment Contracts with Downside Risk with Health Care Payers and Employers, does the subcontracting RBPO need to submit a Risk Certificate Waiver application (or even a Risk Certificate Application)?

If the RBPO does not have any direct Alternative Payment Contracts with Downside Risk with any Health Care Payers or Employers because it has a subcontracting relationship with another RBPO who enters into all Alternative Payment Contracts with Downside Risk on behalf of the original RBPO, the original RBPO does not need to submit either a Risk Certificate Waiver application or a Risk Certificate application.

If the RBPO does have any Alternative Payment Contracts with Downside Risk that it signs directly with a Carrier, the RBPO must submit either a Risk Certificate Waiver application or a Risk Certificate application in order to enter into or renew Downside Risk contracts between March 1, 2016 and February, 2017.

- c. Are separately incorporated ACOs contracted for the Medicare Shared Savings Program (MSSP) required to file for risk certification?

Yes, only Medicare Advantage plans are currently exempt. Each RBPO, except the following, shall be required to file an application for a Risk Certificate prior to each Certificate Year:

- Integrated care organizations or senior care organizations contracted under M.G.L.c.118E, § 9D or 9F that have been certified in accordance with M.G.L.c.118E, 9D(q) or 9F(b) shall be deemed to have satisfied the Risk Certificate requirements for purposes of 211 CMR 155.00 and M.G.L. c. 176T
- RBPOs who have a Risk Certificate Waiver for the upcoming Certificate Year
- RBPOs who will not have any Alternative Payment Contracts with Downside Risk in effect during the upcoming Certificate Year
- RBPOs who only take on Downside Risk as part of Alternative Payment Contracts for Medicare Advantage products

### **3. List of Names Within the Risk Certificate Waiver Application**

According to 211 CMR 155.05(3)(c), the Risk Certificate Waiver application should contain “the official names of the Health Care Payers and Employers with which the applicant is seeking to enter into an arrangement, or has already entered into an arrangement to manage the treatment of a group of

patients, and a statement describing the type(s) of payment arrangement entered into with each Health Care Payer and Employer.”

- a. Do we need to submit only the names of those Health Care Payers and Employers with which the RBPO has Downside Risk Arrangements?

No, the RBPO is required to list every Health Care Payer with which it contracts and then characterize the payment arrangement, including for example, which are fee-for-service arrangement, which have upside-risk only and which are Downside Risk Arrangements.

- b. If an RBPO has directly contracted with a non-Government Payer for a Downside Risk Arrangement even though the vast majority of its Downside Risk Arrangements are through another RBPO which coordinates all Alternative Payment Contracts with Downside Risk with Health Care Payers and Employers, does the subcontracting RBPO need to submit a Risk Certificate Waiver application (or even a Risk Certificate Application)?

Yes.

#### **4. Content of the Risk Certificate Waiver Application**

According to 211 CMR 155.05, “[e]ach Risk-bearing Provider Organization that applies for a Risk Certificate Waiver must submit sufficient information to the Division to demonstrate that its existing or proposed arrangements to manage the treatment of a group of patients according to the terms of one or more Alternative Payment Contracts do not contain significant Downside Risk.”

- a. If there is an RBPO that has one direct contract with a carrier for a Downside Risk Arrangement but has other Downside Risk from a “messenger” or “pass-through” RBPO, does the RBPO only need to discuss the Downside Risk in the direct contract?

No, the RBPO’s explanation that its Downside Risk is not significant must be about the Downside Risk it is taking on through all its direct contracts AND the Downside Risk it is taking on from a “messenger” or “pass-through” RBPO.

#### **5. Additional Resources**

- a. Where can I find the latest information regarding Risk-Bearing Provider Organizations?

Find links to updated information regarding Risk-Bearing Provider Organizations, including regulations, guidelines, application forms and a list of entities which have received waivers. From time to time new documents may be added or certain documents may be amended to reflect changes in law, regulation or practice: <http://www.mass.gov/ocabr/government/oca-agencies/doi-lp/risk-certificate-application-information.html>

- b. Where can I find the “Web-Based” Applications for the Risk Certificate Waiver”?

Form applications for Risk Certificate Waivers, including applications that can be completed on-line, are available on the Division’s website at: <http://form.jotform.co/form/51325612441849>

- c. Is there a list of actuaries who have indicated interest to complete “Risk Certification Actuarial Reviews for RBPOs?”

Yes, this list is currently maintained on the DOI website:

<http://www.mass.gov/ocabr/docs/doi/rbpo/rbpo-actuarial-contacts.pdf>

- d. Where can I find a copy of the “Filing Guidance Notice 2015-C” that was issued on July 22, 2015?

This document is intended to serve as “Supplemental Guidelines on Submitting Filing Materials Relative to the Certification of Risk-Bearing Provider Organizations”:

<http://www.mass.gov/ocabr/docs/doi/companies/checklists/2015-c.pdf>