

**KROKIDAS & BLUESTEIN**  
**ATTORNEYS**

**CLIENT ALERT**

**CHAPTER 224 HEALTH CARE COST CONTAINMENT UPDATE #7:  
REGISTRATION OF PROVIDER ORGANIZATIONS**

Commencing October 1, 2014, certain “Provider Organizations” will begin to complete Part 1 of the initial Registration of Provider Organizations (“RPO”) with the Health Policy Commission (“HPC”). Part 1<sup>1</sup> of the initial RPO requires Provider Organizations to submit organizational background information about themselves, their Corporate Affiliates and their Contracting Affiliations, including a full corporate organization chart.

A **“Provider Organization”** is “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 the definition 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 or Third-Party Administrators for payment for Health Care Services.”

A **“Corporate Affiliation”** is “any relationship between two Entities that reflects, directly or indirectly, a partial or complete controlling interest or partial or complete common control.”

A **“Contracting Affiliation”** is “any relationship between a Provider Organization and another Provider or Provider Organization for the purposes of negotiating, representing or otherwise acting to establish contracts for the payment of Health Care Services, including for payment rates, incentives, and operating terms, with a Carrier or Third-party Administrator.”

Capitalized terms that are not otherwise defined in this alert have the meanings set forth in 958 CMR 6.02.

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<sup>1</sup> Part 2 of the initial RPO will include additional details about facilities, clinical affiliations, health care professionals and other types of information such as corporate affiliates, contracting affiliates or a combination of these items.

## **Background:**

M.G.L. c. 6D, §11, enacted by Chapter 224 of the Acts of 2012, tasked HPC with creating a process whereby Provider Organizations register biennially and report on their organizational, operational and governance structures. Provider Organizations must renew their registration with HPC every two years. Registered Provider Organizations must also report details of their financial and operational performance annually to the Center for Health Information and Analysis (“CHIA”) pursuant to M.G.L. c. 12C, §9.

Over the past several months, HPC has engaged Provider Organizations, CHIA, and other Massachusetts governmental agencies and stakeholders to develop the framework for the RPO. This summer, HPC issued final RPO regulations ([958 CMR 6.00](#)), effective July 18, 2014, and issued Part 1 of the [RPO Data Submission Manual](#) (“DSM”) (Bulletin HPC-RPO-2014-01) to assist Provider Organizations with the registration process. Our Chapter 224 [Client Alert #5](#) highlighted key provisions of HPC’s proposed regulations for the RPO. The final RPO regulations adopt many of these provisions; however, the final RPO regulations have taken into account feedback from stakeholders, and clarify many areas of the draft regulations.

HPC decided to create a two-part registration process for the initial year. This two-part process gives Provider Organizations the opportunity to ask questions about RPO before completing the full registration procedure. HPC recognizes that successful implementation of the RPO will require ongoing collaboration between HPC and the registering Provider Organizations.

### **Must Your Provider Organization Register in the Initial Phase?**

Provider Organizations that meet either of the following registration criteria (“Registration Criteria”) must register in the initial phase (Part 1 and Part 2):

Registration Criteria 1: Acute Hospitals, Long Term Care Hospitals, Rehabilitation Hospitals, Physician Groups and Inpatient or Outpatient Behavioral Health Providers, that negotiate, represent or otherwise act on behalf of, one or more Providers<sup>2</sup> or a Provider Organization in establishing contracts in effect as of July 18, 2014 that collectively:

- (1) Received \$25,000,000 or more in Net Patient Service Revenue (“NPSR”) (defined below) in the Provider Organization’s prior Fiscal Year; and
- (2) Had a Patient Panel of more than 15,000 patients as of the end of the Provider Organization’s most recent complete 36 months (as calculated below).

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<sup>2</sup> A “Provider” is defined as “any person, corporation, partnership, governmental unit, state institution or any other entity qualified under the laws of the Commonwealth to perform or provide health care services.”

“NPSR” is total revenue received in a Fiscal Year for patient care from any Carrier or Third-party Administrator net of any contractual adjustments, using best available data. When calculating NPSR a Provider Organization should include NPSR received from Carriers or Third-Party Administrators for itself, its Corporate Affiliate(s) on whose behalf it establishes contracts, and its Contracting Affiliates. NPSR of Corporate Affiliates on whose behalf the Provider Organization does not contract should not be included in this calculation. Also, Provider Organizations must include the total NPSR for its affiliates – not solely the revenue associated with the contracts it establishes.

- Carriers include commercial payors, Medicaid Managed Care Organizations (MCOs) and Medicare Advantage.
- Carriers do not include fee-for-service agreements with Medicare and Medicaid, or policies limited to dental or vision care only.

If a Provider Organization reaches the NPSR threshold but has a predominant public payor mix generated from direct contracting with Medicare, Medicaid or State contracts, the Provider Organization will not be required to register.

Note that NPSR is calculated differently for purposes of analyzing whether a Provider Organization must file a Notice of Material Change with HPC. HPC’s Interim Guidance previously provided at our Chapter 224 Client Alert #3 illustrates how to perform this calculation; however this calculation will change under the HPC’s regulations which are currently in draft form.

To calculate its “Patient Panel”, a Provider Organization should include the patients seen by it, its Corporate Affiliate(s) on whose behalf it establishes contracts, and its Contracting Affiliates. The patient panels of the Corporate Affiliates on whose behalf the Provider Organization does not contract should not be included in this calculation.

Registration Criteria 2: Provider Organizations that bear significant downside risk in the management of patient care and are required to register with the Division of Insurance under 211 CMR 155.00 as Risk-Bearing Organizations.

### **If Your Provider Organization Meets the Registration Criteria, Can It File an Abbreviated Filing or Claim an Exemption?**

#### Provider Organization & Contracting Affiliate: Abbreviated Application Required

If a Provider Organization meets the Registration Criteria and is also the Contracting Affiliate of another registering Provider Organization, the Provider Organization in question may fulfill its requirement to register by submitting an abbreviated application.

If you believe your organization qualifies to make an abbreviated filing, you must complete Part 1 of the RPO and state that the organization so qualifies in the section entitled “Background

Information”. Part 1 of the RPO is identical for Provider Organizations submitting either an abbreviated or full application.

#### Provider Organization & Corporate Affiliate: No Registration Required

If a Provider Organization meets the Registration Criteria and is also the Subsidiary of another registering Provider Organization, the Provider Organization in question does not need to submit application materials.

#### **Initial Registration Timeline**

<b>Action</b>	<b>Date</b>
DSM: Part 1 Released	July 23, 2014
Training Sessions	August – September 2014
One-On-One Meetings	August – October 1, 2014
Initial Registration: Part 1 Opens	October 1, 2014
Initial Registration: Part 1 Closes	November 14, 2014
DSM: Part 2 Released	Q4, 2014 ( <i>Estimated</i> )
Initial Registration Part 2	Q1, 2015 ( <i>Estimated</i> )

HPC scheduled two training sessions in August 2014 for Provider Organizations. HPC anticipates uploading a recording of the training for those unable to attend. Additional trainings may be scheduled based on interest. In-person meetings may also be requested. Provider Organizations can also email questions and comments to HPC, and are encouraged to review the FAQs on the website.

#### **If Your Provider Organization Required to Register but Already Provides Certain Information to Other State Agencies, Must It Submit this Information Again?**

The final RPO regulations provide that the registration requirements may be fulfilled through reporting such information to other state agencies, as may be specified by HPC. Part 1 of the Initial Registration includes general identifying information only and HPC does not specify that it will pull this information from other agencies. We will likely see more guidance from HPC in Part 2 of the DSM on this point.

#### **If I Register, When Must I Update My Registration Off-Cycle?**

Provider Organizations that register must update their information on file with HPC within 21 calendar days after the effective date of any change that directly affects the registration information on file if it also:

- required a Determination of Need by the Department of Public Health (“DPH”);
- required a Material Change Notice to be filed with HPC; or
- required an essential services filing with DPH pursuant to 105 CMR 130.00.

## **What Happens to Provider Organizations Who Meet the Registration Criteria but Do Not Register?**

Any Provider Organization that meets the Registration Criteria but fails to register is prohibited from negotiating or engaging in network contracts with any Carrier or Third Party Administrator. HPC may provide notice of such non-compliance to Carriers and Third Party Administrators.

If HPC determines that a Provider Organization meets the Registration Criteria but has not registered, HPC may send written notice to such Provider Organization requiring it to either:

- Register within 30 days of the date of the notice, or
- Submit adequate supporting documentation satisfactory to HPC demonstrating that it does not meet or is exempt from the Registration Criteria.

If you have questions about the RPO process or need assistance in determining whether your organization must register, please contact Attorneys Jennifer Gallop ([jgallop@kb-law.com](mailto:jgallop@kb-law.com)), Robert Griffin ([rgriffin@kb-law.com](mailto:rgriffin@kb-law.com)), or Emily Kretchmer ([ekretchmer@kb-law.com](mailto:ekretchmer@kb-law.com)).