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CLIENT ALERT

CHAPTER 224 HEALTH CARE COST CONTAINMENT UPDATE #5: PROPOSED REGISTRATION OF PROVIDER ORGANIZATIONS PROGRAM REGULATIONS (958 CMR 6.00)

We wanted you to be aware of a public hearing on February 12, 2014 relating to draft regulations and initial guidance for the Registration of Provider Organizations. This Client Alert summarizes the key provisions of the draft regulations and initial guidance.

M.G.L. c. 6D, §11, enacted as part of Chapter 224 of the Acts of 2012 ("Chapter 224"), requires that certain Providers and Provider Organizations (as defined below) register biennially with the Health Policy Commission ("HPC") and report annually on their organizational, operational and financial practices. On January 8, 2014, the HPC approved draft regulations and initial guidance for the registration of Provider Organizations ("RPO") - http://www.mass.gov/anf/docs/hpc/cdpsr/20131213-memo-and-draft-regulation-to-cdpsr-watermarked.pdf ("RPO Draft Regulations"). As noted above, a public hearing on the RPO Draft Regulations is scheduled for Wednesday, February 12, 2014 at 12:00PM. Written testimony and comments must be received by 12:00PM on Friday, February 28, 2014. HPC anticipates finalizing the RPO Draft Regulations this spring.

The following summary of the key provisions of the RPO Draft Regulations provides guidance to determine whether registration is required for a Provider or Provider Organization.

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."

A **"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 for the payments of heath care services; provided, that "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."

For the purposes of this Client Alert, "Provider Organization" means both Provider and Provider Organization.

1. **When is a Provider Organization required to register with the HPC?**

A Provider Organization is required to register when it meets any of the following registration criteria ("Registration Criteria"):

- If the Provider Organization bears significant downside risk in the management of patient care and is required to register with the Division of Insurance under 211 CMR 155.00 as a Risk-Bearing Organization; or

- If the Provider Organization has a Patient Panel greater than 15,000 (as calculated below) and a Net Patient Service Revenue ("NPSR") of $25,000,000 or more from Carriers or Third Party Administrators as of the end of the Provider Organization's prior fiscal year. The RPO Draft Regulations set forth a process for the Provider Organization to obtain approval not to register if NPSR is greater than $25,000,000 but the patient panel is less than 15,000. Note that the HPC can independently identify organizations that meet the NPSR threshold using data provided by the Centers for Health Policy and Analysis ("CHIA").

2. **How does a Provider Organization calculate its Patient Panel?**

- The Provider Organization determines the total number of individual patients seen by it in the 36-month period ending with its prior fiscal year. The fiscal year is specific to the Provider Organization and the 36-month period will be calculated differently depending on your fiscal year end.

3. **What is a Carrier for the purposes of calculating a Provider Organization's NPSR?**

- Carriers include commercial payors, Medicaid Managed Care Organizations (MCOs), Medicare Advantage, employer provided coverage, and dental or vision care policy providers.

- Carriers do not include fee-for-service agreements with Medicare and Medicaid.

If a Provider Organization reaches the NPSR threshold but has a predominant public payor mix generated from direct contracting with Medicare and Medicaid, 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. The HPC's Interim Guidance previously provided at Client Alert #3 illustrates how to perform this calculation.

4. **Is a Provider Organization required to register with the HPC if it is an affiliate of another Provider Organization?**

No. A Provider Organization that is owned or controlled by another Provider Organization (an "Affiliate") may meet its obligation to register through the registration of the Provider Organization that owns or controls it (a "Parent").

An Affiliate may be either a contractual Affiliate or a corporate Affiliate of a Parent. A contractual Affiliate is one where a Parent contracts on the Affiliate's behalf with a Carrier or Third Party Administrator. Examples are Physician-Hospital Organizations (PHOs) and Independent Practice Associates (IPAs). A corporate Affiliate is one where a Parent has a partial or complete controlling interest in an Affiliate or where there is common control.

To determine if a Parent and an Affiliate are required to register, the patient panel and NPSR numbers are aggregated in the calculation.

5. What are the deadlines for registering with the HPC?

Once the RPO process goes into effect, registration will be staggered. The following Provider Organizations that meet the Registration Criteria as of April 1, 2014 must register by July 1, 2014:

- Physician Groups
- Acute Hospitals
- Rehabilitation Hospitals
- Long-Term Acute Care Hospitals
- Provider Organizations that provides inpatient or outpatient Behavioral Health Services

HPC has not included filing deadlines for other provider types under the proposed registration schedule.

If any of the above Provider Organization types do not meet the Registration Criteria as of April 1, 2014, but qualify to register at a later date, it must do so no later than 90 days after meeting the Registration Criteria.

At any time, a Provider Organization not required to register may voluntarily submit an application.

Thereafter, registration is biennial if the Registration Criteria continue to be met.

6. How does a Provider or a Provider Organization register?

The HPC will publish a Data Submission Manual (the "Manual") which will contain detailed specifications and guidelines for registration. The Manual will be released this winter for public comment. Note that the RPO Draft Regulations will likely not be promulgated until after the public comment period on the Manual ends (Spring of 2014).

The application for registration must be certified by two authorized representatives, unless otherwise determined by HPC, and must include the following information by practice site level, practice group level, or Provider Organization level as indicated in Manual:

- Information about ownership, governance and operational structure;
- The number of health care professional full-time equivalents by license type and specialty;
- The name and address of each facility that is owned or controlled by the Provider or Provider Organization;
- If applicable, a statement certifying that the risk-bearing organization has received a certificate or waiver;
- Information on utilization by major service category as defined in the Manual; and
- Total revenue by payor under pay for performance arrangements, risk contracts and other fee for service arrangements as specified in the Manual.

Within 30 days after receiving an application, HPC may require an applicant to provide supplemental information before deeming the application complete. All requests for supplemental information must be responded to within 21 days unless otherwise authorized by HPC.

HPC may also require, at any time, additional information reasonable and necessary to determine the financial condition, organizational structure, business practices or market share of the registered Provider Organization.

7. **Will HPC streamline reporting with other State agencies?**

   HPC will engage in a collaborative process with CHIA to streamline the registration and reporting process. Also, whenever possible, HPC will collect data related to the statutorily defined reporting requirements from other agencies.

8. **Is there a fee to register a Provider Organization?**

   By statute and in the draft regulations, the HPC may require a filing fee. However, the HPC has proposed waiving any filing fees for the first year of registration.

9. **What happens if a Provider Organization fails to 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 written notice, or
   - Submit adequate supporting documentation satisfactory to HPC demonstrating that it does not meet the Registration Criteria.

Please contact Robert Griffin (rgriffin@kb-law.com), Jennifer Gallop (jgallop@kb-law.com) or Emily Kretchmer (ekretchmer@kb-law.com) if you have questions on the applicability of the RPO Draft Regulations to your organization or if you would like to submit comments on the RPO Draft Regulations.