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958 CMR 7.00: Guidance

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1. Introduction

This document is intended to provide additional detail on the Notice of Material Change (MCN) process pursuant to [958 CMR 7.00: Notices of Material Change and Cost and Market Impact Reviews](#).

The Health Policy Commission (HPC) recognizes that each transaction has unique facts and circumstances and that multiple factors may affect whether a proposed transaction will require the filing of an MCN with the HPC. The HPC encourages stakeholders with specific questions to contact HPC-Notice@mass.gov.

Capitalized terms contained herein are defined in 958 CMR 7.02.

Notices of Material Change should be submitted using the form on the HPC website, available here: <https://masshpc.gov/regulations-guidance> (the “MCN form”). Information submitted on this form is public.

2. Relationships that do not, alone, constitute Control of an Entity

a. Charitable Relationships

A person or Entity would not be considered to have Control of another Entity solely on the basis of making a charitable gift to another Entity. That is, a charitable gift does not, by itself, create Control, even if the gift is given with restrictions as to its permissible use.

b. Research Collaboration

A person or Entity would not be considered to have Control of another Entity solely on the basis of joint participation in a research collaboration. That is, a research collaboration does not, by itself, create Control.

3. Calculation of Net Patient Service Revenue (NPSR)

a. Count revenue from all affiliates represented in contracting with Payers

For purposes of the MCN Filing Threshold, NPSR includes the revenue of the uppermost corporate parent in the business of health care and all affiliates. Affiliates include both corporate and contracting affiliates. When determining whether it meets the MCN Filing Threshold, a Provider Organization must include the total NPSR received by both owned and non-owned providers represented by the Provider Organization in contracting with Payers. An Entity that provides bargaining representation, “messenger model” contracting, or other support for negotiating and establishing contracts with Payers is considered to represent a provider even if that Entity is not itself a signatory to the payer contacts. A Provider Organization’s NPSR includes all revenue received by affiliates from Payers, regardless of the type of contract (i.e., global payment, FFS, etc.) or whether the revenue was received through a contract established by the Provider Organization.

b. Revenue Outside of Massachusetts

NPSR includes revenue from any Payer regardless of whether the Payer, patient, or service is located in Massachusetts.

c. Revenue from point-of-sale pharmacy services

Revenue from point-of-service sales of pharmaceuticals and medical supplies is included in NPSR if the sale of pharmaceuticals and medical supplies is a Provider's principal Health Care Service.

4. Transactions Involving Entities Outside of Massachusetts

In general, a Massachusetts Provider or Provider Organization that is party to a proposed transaction must file an MCN if the Provider or Provider Organization meets the MCN Filing Threshold and the transaction meets the definition of a Material Change. Entities are encouraged to contact the HPC with any questions regarding filing requirements.

a. Acquisition of or Merger with a Massachusetts Hospital or hospital system

The HPC requires the filing of an MCN for all proposed Acquisitions of or Mergers with a Massachusetts Hospital or hospital system, regardless of the location of the other party to the transaction.

b. Acquisition of an out-of-state hospital system

The HPC requires the filing of an MCN for proposed acquisitions by a Massachusetts Provider or Provider Organization of a hospital system with at least one location in New England or New York. At this time, an MCN is not required for acquisitions by a Massachusetts Provider or Provider Organization of a hospital system with no locations in New England or New York.

For the purpose of determining whether a proposed transaction involving an out-of-state hospital system requires the filing of an MCN, the HPC considers a party to a transaction to be a hospital system if it includes either: (1) two or more hospitals that operate under common corporate ownership or Control; or (2) a hospital and at least one other entity providing Health Care Services (e.g., physician group, outpatient clinic, home health service) that operate under common ownership or Control.

c. Other transactions involving an out-of-state provider Entity

The definition of Material Change under 958 CMR 7.03(1)(c) includes certain transactions involving an Entity representing non-Massachusetts health care providers in contracting with Payers for Health Care Services. This Guidance refers to such Entities as "out-of-state provider Entities."

Such a transaction is a Material Change if an out-of-state provider Entity proposes an Acquisition of, Corporate Affiliation with, Contracting Affiliation on behalf of, or employment of the Health Care Professionals of a Massachusetts Provider Organization, *and* the transaction would increase the annual Net Patient Service Revenue of the out-of-state entity by an amount equal to or greater than the Revenue Increase Threshold.

With the exception of transactions involving out-of-state hospital systems described above, proposed corporate or contracting affiliations in which a Massachusetts Provider or Provider Organization would acquire, employ the health professionals of, or contract on behalf of an out-of-state provider Entity are not Material Changes.

5. Contracting Affiliations and Formation of Contracting Entities

a. Entities that support negotiation and establishment of contracts

An Entity that provides bargaining representation, “messenger model” contracting, or other support for negotiating and establishing contracts with Payers is a Provider Organization for the purpose of 958 CMR 7.00, even if that Entity is not itself a signatory to the payer contracts.

b. Revenue Thresholds for New Entities

In determining whether an MCN filing is required, there is no revenue threshold for the new joint venture, Management Services Organization, or other new Entity formed to contract or administer contracts. If any Provider or Provider Organization that is party to the formation of the new Entity meets the MCN Filing Threshold, that Provider or Provider Organization must file an MCN prior to the formation of the contracting Entity, notwithstanding the fact that the Entity will not exist, or have any revenue, prior to the HPC’s review.

c. Requirement to file before initiation of commercial contracting

An existing contracting Entity planning to initiate joint contracting with commercial Carriers or Third-Party Administrators for the first time (e.g. a Medicare ACO beginning to contract with commercial insurers) is a Material Change under 958 CMR 7.03(1)(c). The formation of an Entity to jointly establish contracts with commercial Carriers or Third-Party Administrators is a Material Change under 958 CMR 7.03(1)(e).

Neither initiation of new Medicare or Medicaid joint contracting by an existing Entity nor the formation of an Entity for the sole purpose of establishing Medicaid or Medicare contracts is considered a Material Change at this time.

6. Employment of Health Care Professionals

A Provider or Provider Organization recruiting Health Care Professionals should file a notice with the HPC if it expects to hire, within any given 12-month period, enough Health Care Professionals from the same Provider Organization that it expects an increase in Net Patient Service Revenue (NPSR) equal to or greater than the Revenue Increase Threshold.

a. Timing of Filing

In the case of the planned employment of Health Care Professionals that may be effectuated over a period of time, the Provider or Provider Organization should file at least 60 days before the effective date of the first proposed new employment.

The HPC understands that a Provider or Provider Organization might begin hiring Health Care Professionals without expecting to hire enough individuals that it expects an increase in NPSR above the Revenue Increase Threshold. If it becomes clear over the course of a 12-month period that the employment of Health Care Professionals will meet the definition of a Material Change, the Provider Organization should file at least 60 days before the effective date of the employment of the Health Care Professional(s) that would result in the hiring exceeding the Revenue Increase Threshold.

b. Additional Employment from the Same Provider Organization

If the Provider or Provider Organization hires more Health Care Professionals from the same Provider Organization beyond the number reported with the initial Notice of Material Change filing, the filing party must confidentially inform the HPC of the additional hires and, depending on the number and timing, this hiring may constitute a new Material Change.

c. Filing Parties and Information to be Disclosed Publicly

The Provider or Provider Organization's public Notice of Material Change should describe the approximate number of Health Care Professionals anticipated to be employed from the same Provider or Provider Organization and the name of the Provider or Provider Organization from which such Health Care Professionals have been or would be recruited. However, the individual names of the Health Care Professionals should not be included on the MCN form.

d. Additional Employment from the Same Provider Organization

If the Provider or Provider Organization hires more Health Care Professionals from the same Provider Organization beyond the number reported with the initial Notice of Material Change filing, the filing party must confidentially inform the HPC of the additional hires and, depending on the number and timing, this hiring may constitute a new Material Change.