



Safeguarding Financial Stability of Provider Risk-Bearing Organizations: State Considerations

October 23, 2018

STATE
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About State Health Value Strategies

State Health and Value Strategies (SHVS) assists states in their efforts to transform health and health care by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's Woodrow Wilson School of Public and International Affairs. The program connects states with experts and peers to undertake health care transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.shvs.org.

Questions? Email Heather Howard at heatherh@princeton.edu

About Bailit Health

Bailit Health is a consulting firm founded in 1997. We assist states, health plans, employer purchasers, and others with the design and implementation of strategies to improve health care quality and reduce cost growth. We offer many services, some of which include:

- Strategic program design for public and private health care purchasers;
- Design and implementation of value-based payment models;
- Design and management of procurement processes; and
- Design and facilitation of large-scale multi-stakeholder processes.

Over the last 21 years, we have supported 35 states and the District of Columbia in this work. For more information, visit: <http://www.bailit-health.com>

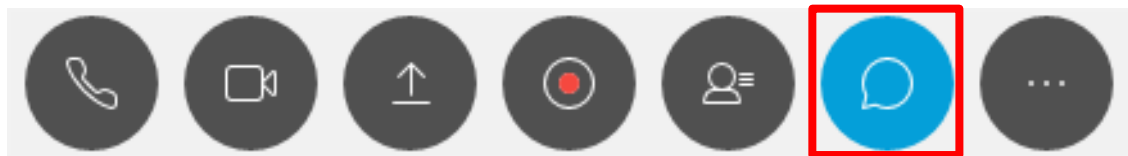
Logistics

- This webinar is being recorded.
 - The recording and slides will be available following the webinar.
- Telephone lines will be muted.
 - Please mute your line. Please do not put your line on hold.
- Questions can be submitted electronically at any time.

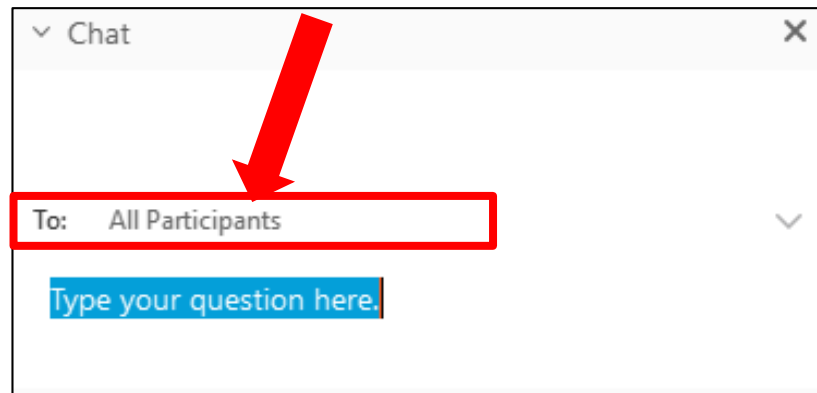


Asking Questions Electronically

- Right click on the Chat button on the bottom panel in the WebEx program.



- Type your question in the chat box. Select “All Panelists” and click “Send.”



- The “Q&A” function can also be used in a similar way.

Presentation Overview

1. Drivers of Health Care Payment Reform
2. Payment Reform Implications for States
3. State Responses to Delegation of Financial Risk to Provider Risk-Bearing Organizations
 - a. Rationale for Regulating/Not Regulating
 - b. Examples of State Approaches
4. Other Considerations for States
5. Approach in Massachusetts

Background: Health Care Payment Reform Drivers

- CMS is actively encouraging efforts by purchasers, plans, and providers to change payment and improve care delivery, often through adoption of value-based payment (VBP) models
 - CMS has been supporting state reforms through State Innovation Model (SIM) grants
- States are focused on getting more value from their purchase of health care
 - Increasingly holding MCOs and providers accountable cost and quality of care
 - State Medicaid agencies, in varying degrees of collaboration with insurers and employer purchasers, are testing multiple new payment models (directly with providers, and with providers through MCOs)
 - Pace of payment reform and transformation varies across states with some states taking more action than others

Why Might Payment Drivers Concern States?

- Providers are increasingly entering into risk-based payment arrangements
 - Transferring financial risk from payers to providers for health care services is a common feature of VBP models
- These risk-bearing organizations (RBOs) are liable for financial losses if spending on services exceeds a target
 - Financial liability is often shared with payers
 - Maximum risk exposure is typically capped – but the level of risk acceptance can be sizeable (in the millions of dollars)
 - 1990s: multiple bankruptcies occurred among large provider organizations, especially in California, where risk-transfer arrangements were most common



State Response to Growth of Delegated Risk

- Analyze the risks and implications of significant financial distress or insolvency brought on by providers accepting risk
- Decide whether there is a public interest in regulating RBOs
 - A few states have elected to regulate RBOs and their approaches vary.
 - Most have not.

Possible State Rationale for Regulating RBOs



To assure that RBOs responsible for the provision of health care services **are financially sound** by establishing financial protections to guard against significant market disruptions that may threaten the delivery of care to consumers



To **minimize potential confusion around when a provider may be doing the business of insurance** and ensure RBOs are clear about rules that govern their operations



To promote **transparency of financial condition** to assure payers and state purchasers of provider solvency

State Regulatory Options and Mechanisms

No State Oversight

Full State Oversight



- **Examples**

- Delegation to insurers
- Financial review and approval of risk-based contracts
- Certification

Example: Delegation of Oversight to Insurers

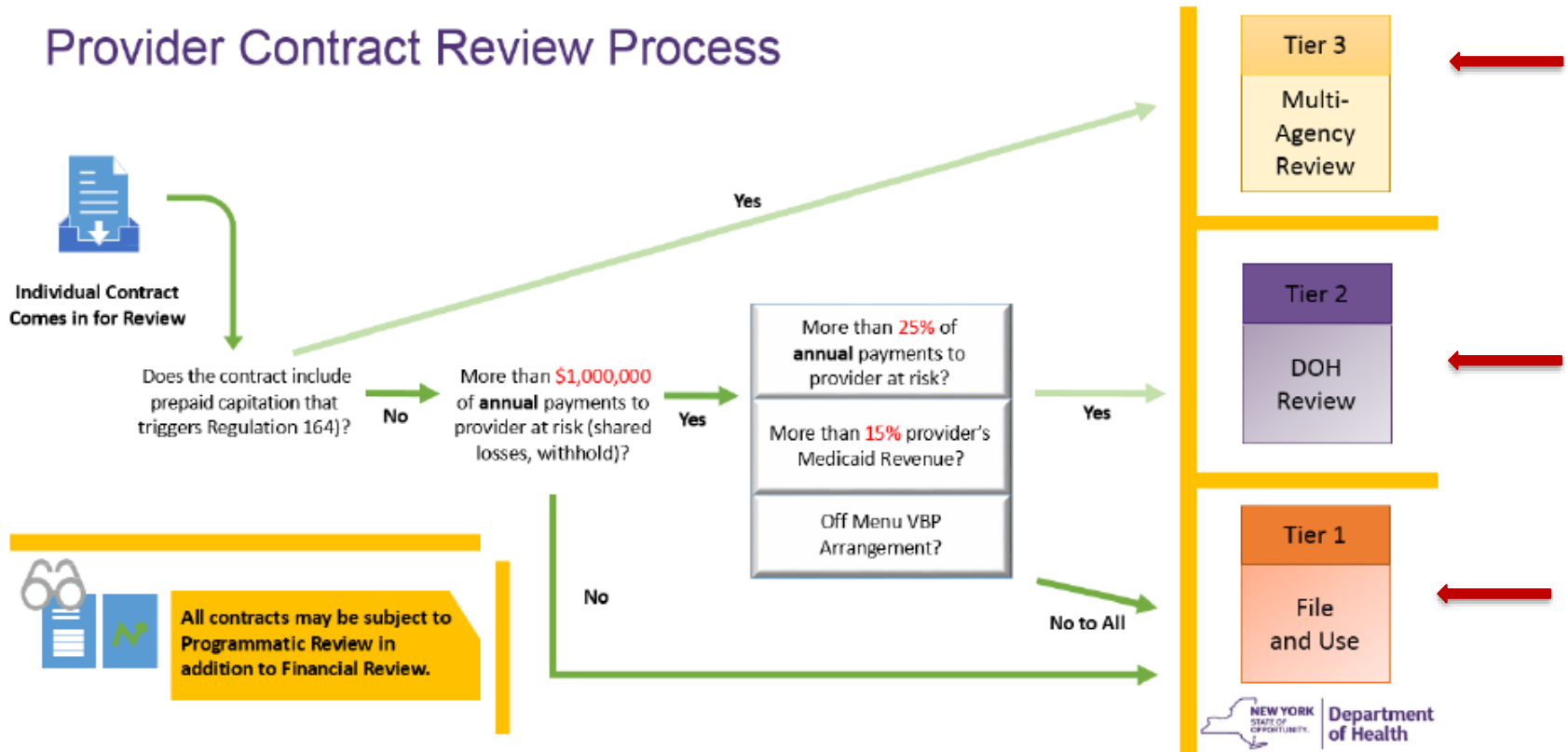
- **Rhode Island** requires insurers to determine that an RBO has “operational and financial capacity and resources needed to assume clinical and financial responsibility for the provision of covered services to members attributable to the provider organization” prior to risk-based contracting.
- **Tennessee** updated the state’s HMO Act.
 - Permits risk-based contracting between HMOs and providers
 - Indicates that a “physician-hospital organization” is not deemed to be an insurer or HMO by accepting prepayment for health care services or entering into other risk-based payment arrangements with HMOs
 - Requires that HMOs assure the RBOs with which they contract obtain aggregate or per-patient stop-loss insurance when the RBO accepts “substantial financial risk.”

Example: Financial Review and Approval

- **New York's** Regulation 164 creates standards for the transfer of financial risk from insurers to provider organizations.
 - Requires provider organizations to comply with certain financial and consumer protections
 - Ultimate financial risk is retained by the insurer
- Department of Financial Services and/or Department of Health (DOH) must review and approve risk-bearing contracts between MCOs and provider organizations.
 - DOH issued provider contracting guidelines outlining a tiered review and approval process for risk-based payment arrangements
 - Response to stakeholders seeking more expedited review of MCO and provider contracts

State Approach Example: Financial Review and Approval (cont'd)

Provider Contract Review Process



New York State Department of Health Provider Contract Guidelines for Article 44 MCOs, IPAs, and ACOs. Updated April 2017. www.health.ny.gov/health_care/managed_care/hmoipa/docs/guidelines.pdf.

Example: RBO Certification

- **Vermont's** ACO certification process includes a requirement that applicants “maintain at all times an adequate level of financial stability and solvency.”
- Certified ACOs that accept downside risk must propose a risk cap that the ACO could absorb given the financial resources, insurance coverage and other arrangements supported by:
 - a risk mitigation plan describing how the ACO would cover the losses
 - certification from an actuary that it is financially solvent within the limits of its proposed cap
- ACOs must assess financial vulnerabilities and report results of financial arrangements to their governing body on an ongoing basis.

Other Considerations for States

- How to maximize opportunities to educate providers on the financial and operational implications of accepting financial risk?
- How to balance a desire to support payer and provider contracting arrangements that test innovative and advanced accountable payment models with consumer protections?

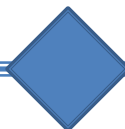
If you are considering a regulatory strategy...

- How to assure that a regulatory framework does not unfairly preclude some payers or providers from participating in RBO risk arrangements?
- How to balance RBO concerns regarding the confidentiality of contract and financial information with public policy transparency objectives?



Commonwealth of Massachusetts

Division of Insurance



Risk-Bearing Provider Organizations

Kevin P. Beagan

Deputy Commissioner of the Health
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Risk-Bearing Provider Organizations (RBPO)

As of March 1, 2015, provider organizations accepting downside risk from a payer are subject to Division of Insurance review.

- Each provider organization signing a downside risk arrangement with a payer is to have a separate risk certificate or risk certificate waiver.
 - A provider organization that is related (*i.e.*, corporately affiliated through a parent-child relationship) to a provider organization with a risk certificate entity (such as a sister or parent organization) still needs its own risk certificate if it is a separate signatory to a downside risk arrangement with a payer.
 - Provider organizations utilizing contracting entities to sign on their behalf remain subject to all provisions of M.G.L. c. 176T and 211 CMR 155.00.
- Insurance carriers may only enter into a downside risk arrangement with a provider organization if the provider organization either has a risk certificate or risk certificate waiver.
- **Risk Certificates are effective between the beginning of March 1 and end of February in the following year.**

Risk-Bearing Provider Organizations (RBPO)

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 that have a Risk Certificate Waiver for the upcoming Certificate Year
- RBPOs that will not have any Alternate Payment Contracts with Downside Risk in effect during the upcoming Certificate Year
- RBPOs that only take on Downside Risk as part of Alternate Payment Contracts for Medicare Advantage products

Risk-Bearing Provider Organizations (RBPO)

RISK CERTIFICATE



Risk-Bearing Provider Organizations (RBPO)

Each Risk Certificate Application shall include:

An actuarial certification, consistent with 211 CMR 155.07:

A statement, signed by a member of good standing with an actuary society located in the United States that, after examining the terms of all the applicant Risk-Bearing Provider Organization's Alternative Payment Contracts with Downside Risk, the actuary concludes that such Alternative Payment Contracts are not expected to threaten

- the financial solvency of the applicant Risk-Bearing Provider Organization; or
- the financial solvency of any entity with which the Risk-Bearing Provider Organization has a Contracting Affiliation during the period of the renewing Risk Certificate.

Risk-Bearing Provider Organizations (RBPO)

Additional Guidance Concerning Actuarial Certifications:

When the review is completed, the actuarial certification to be signed should contain terms substantially similar to the following:

“This opinion is related to my review of the total Downside Risk within [*insert name of RBPO*]’s existing and prospective Alternate Payment Contracts in conjunction with a review of the RBPO’s financial condition and procedural controls, and in some circumstances, according to the guidance provided by the Massachusetts Division of Insurance, in conjunction with [*insert name of RBPO*]’s application for a Risk Certificate for the Term Beginning March 1, [*enter year*]. The review that was conducted was of the Downside Risk within the Alternate Payment Contracts and did not review other risks, including investment risk and other business risks.

Based upon the limited scope of my review of the Downside Risk within the Alternate Payment Contracts described above, I find that the Downside Risk associated with the Alternate Payment Contracts is not expected to cause insolvency to the entity on its own, without consideration of other risks that could impact [*insert name of RBPO*]’s financial solvency during the 12-month period that the proposed Risk Certificate will be in effect.”

Risk-Bearing Provider Organizations (RBPO)

Material Changes

An RBPO that has been issued a Risk Certificate shall report to the Division any material change to the information contained in its initial or renewal Risk Certificate application in a document certified by an officer of the RBPO, within 30 days of such change.

A material change could include, but is not limited to, the addition of new Alternative Payment Contracts, amendments to Downside Risk provisions in existing Alternative Payment Contracts, changes to the number or types of patients that are covered under existing Alternative Payment Contracts, or changes to the organizational structure of any Provider Organization.

RISK CERTIFICATE WAIVER

Risk-Bearing Provider Organizations (RBPO)

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 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.

Risk-Bearing Provider Organizations (RBPO)

Where an RBPO can demonstrate that it has *only* a small proportion of its revenue derived from health services provided under Alternate Payment Contracts, and *only* a small percentage of the payments that it receives under those Alternate 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 Alternate 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 Alternate Payment Contracts with Downside Risk.

Risk-Bearing Provider Organizations (RBPO)

Frequently Asked Questions:

1. Where can I find Applications for the Risk Certificate or Risk Certificate Waiver?

A: Form applications for Risk Certificates and Risk Certificate Waivers are available on the Division's website at:

<http://www.mass.gov/ocabr/government/oca-agencies/doi-lp/risk-certificate-application-information.html>.

2. Is there a list of actuaries who have indicated interest to complete "Risk Certification Actuarial Reviews for RBPOS?"

A: Yes, this list is currently posted on the DOI website:

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

Q&A

Thank You

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