

KROKIDAS & BLUESTEIN

ATTORNEYS

HEALTH LAW CLIENT ALERT

CHAPTER 224 HEALTH CARE COST CONTAINMENT UPDATE #10:

HEALTH POLICY COMMISSION RELEASES FINAL MATERIAL CHANGE NOTICE REGULATIONS; EFFECTIVE JANUARY 2, 2015

Effective January 2, 2015, the Health Policy Commission (the “HPC”) finalized its regulations governing material change notices (“MCNs”) and cost and market impact reviews (“CMIRs”) (the “Final Regulations”). Codified at [958 CMR 7.00](#), the Final Regulations are generally consistent with the proposed MCN regulations – with a few additions and clarifications. The HPC also finalized its corresponding [Technical Bulletin](#) concerning the calculation of Primary and Dispersed Service Areas, Materially Higher Price, and Materially Higher Health Status Adjusted Total Medical Expenses and revised its [Notice of Material Change Form](#) for consistency with the Final Regulations.

The major differences between the Final Regulations and the proposed MCN regulations released on September 4, 2014 are summarized below (capitalized terms are defined in the Final Regulations). We have attached our redline for your convenience (located here [[←LINK TO DOC# 372968](#)]).

1. The Final Regulations include a new Section 7.13 which requires a Provider or Provider Organization to wait for a determination from the HPC (e.g., a final CMIR) before proceeding with a Material Change.
2. The HPC amended and clarified the definition of Material Change¹ by:
 - a. Excluding Clinical Affiliations entered into for the sole purpose of collaboration on clinical trials or graduate medical education programs, but declining to limit the otherwise broad definition;
 - b. Explicitly including the formation of management services organizations. The HPC has advised us that for the formation to be considered a Material Change, one of the Providers or Provider Organizations in the management services organization must meet the \$25 million threshold for MCNs; and

¹ Note the HPC has advised us that an Acquisition (more specifically, a “takeover”) under the Final Regulations is not intended to encompass the expansion of services by a Provider to replace services previously offered by a closed facility or Provider.

- c. Expanding from the formation of organizations created for current or future provider “contracting” to also include organizations created for “administering” contracts with Carriers or third-party administrators.
3. The HPC may refer Providers and Provider Organizations to the Attorney General’s Office even if the actions of the Providers or Provider Organizations do not fall within the HPC’s statutory mandate for referral, particularly if Providers or Provider Organizations fail to file an MCN.
4. The Final Regulations now contain the broad definition of Health Care Services included in the underlying statute – M.G.L. c. 6D, § 1.
5. The 185-day timeframe for the HPC’s completion of a final CMIR may only be extended for a period commensurate with any additional time granted by the HPC to comply with information requests.

For more information, please refer to our September 11, 2014 Client Alert: [Chapter 224 Health Care Cost Containment Update #8: Health Policy Commission Releases Proposed Material Change Notice Regulations](#).

It is important to note that the HPC declined to include essential service notices within the definition of Material Change but has requested that it be copied on essential services notices and be given an opportunity to comment (see Essential Services Task Force Letter [[← LINK TO DOC #372988](#)]). In essence, the HPC is requesting a role in the Department of Public Health’s regulation of essential services similar to the one it possesses with respect to Determination of Need applications.

The HPC intends to develop additional sub-regulatory guidance and clarifications in the future, such as thresholds for determining Dominant Market Share for services other than inpatient general acute care, and a definition for “near-majority of market share in a given service or region.”

If you have any questions about the Final Regulations or would like assistance in determining how they may impact your organization, please contact Attorneys Jennifer Gallop (jgallop@kb-law.com), Robert Griffin (rgriffin@kb-law.com), or Emily Kretchmer (ekretchmer@kb-law.com).