



**Department
of Health**

Medicaid
Redesign Team

PPS Lead Entity NewCo Q&A

Questions raised by PPS Lead Entities regarding forming a NewCo

September 2015

1. Do existing LLCs need to change their status to a Not-for-Profit Corporation?

No. They may, however, need to update or amend their Operating Agreement (or change in other ways) in order to ensure that they meet the requirements listed below.

- Requirements for all NewCo PPS Lead Entities:
 - If any of the Safety Net Members of a proposed NewCo PPS Lead Entity is for-profit, then the NewCo must incorporate as a Not-for-Profit Corporation
 - If entirely owned by Not-for-Profit entities, the proposed NewCo PPS Lead Entity may incorporate as an LLC
 - The LLC Operating Agreement will describe the LLC Members, and Managers will be defined as those individuals serving on the Governing Board of the Company
 - All LLC Members of a PPS Lead Entity NewCo must be Safety Net

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1. Do existing LLCs need to change their status to a Not-for-Profit Corporation?

- Requirements for all NewCo PPS Lead Entities (*continued*):
 - If incorporated as an LLC, language that upholds the following requirements must be included in the LLC Operating Agreement:
 - The LLC will be operated with the principles of a tax-exempt and “non-profit” manner
 - LLC Members must all be Safety Net entities
 - The Operating Agreement must have Reserved Powers for the LLC Members that include determining DSRIP funds flow methodology for the PPS (i.e., how DSRIP funds will flow and methodology for determining relative distribution to downstream providers)
 - Funds flow must be controlled by the LLC Safety Net Members, maintaining the restriction of 5% directly to non-Safety Net providers
 - Non-Safety Net members may be on the PPS’s Board of Managers in addition to the Managers appointed by the LLC Members

2. If there have been changes in the NewCo since the original VAP Exception was approved, what process is required for notifying DOH/CMS?

The NewCo must maintain the same structure, as described to and accepted by DOH and CMS, for the life of DSRIP.

Any material change in the NewCo structure, governance, or membership (as previously approved by DOH and CMS) over the course of DSRIP requires notifying DOH and re-applying for DOH and CMS approval.

3. Do existing NewCos need to change their board structure so that there are only voting representatives from Safety Net entities?

No, as long as decisions on methodology for the allocation and/or distribution of DSRIP funds are reserved for the Safety Net Members of the NewCo.

Safety Net Members of the NewCo need to approve any change in methodology for the distribution of DSRIP funds to downstream PPS partners.

4. What does it mean for the Newco to "be a subsidiary of or controlled by the former lead"?

If a PPS wishes to incorporate a NewCo that will become the PPS Lead Entity (i.e., the NewCo was not considered in the original VAP Exception process and/or is not currently acting as the PPS Lead Entity for DSRIP), then the existing PPS Lead Entity needs to be one of the Members of the newly formed NewCo.

For example: If *Hospital X* (a safety net hospital) is currently the PPS Lead Entity, but the PPS wishes to incorporate *PPS Company Y* and have that become the Lead Entity, then *Hospital X* must be one of the Members (with Reserved Powers) of *PPS Company Y*.

Based on the "Additional Clarification for the PPS Lead & PPS Lead Financial Stability Test" (released to PPSs on November 5, 2014), if the former PPS Lead Entity also passed the PPS Lead Financial Stability test for the PPS, then the former PPS Lead Entity must have at least a 25% ownership share in the new corporate structure.

5. What does it mean for the former lead (or other entity that passed the Financial Stability Test) to "back" the NewCo? What is required of the entity to do this? Where do their responsibility and liability end?

The entity that passed the Financial Stability Test attested to having taken the test on behalf of the new PPS Lead Entity. The importance for this was described in the Financial Stability Test released to PPSs in October 2014:

The PPS Lead will serve a clear and critical role in ensuring the overall success of the DSRIP program on behalf of the proposed PPS organization. Therefore, the selection of the PPS Lead is imperative, not only to ensure the goals and objectives of the PPS are achieved, but the potential ramifications and impact the performance of the PPS has on the statewide goals and objectives of the DSRIP program. The organization selected as the PPS Lead must meet minimum qualifications in order to ensure the success of the DSRIP program.

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5. What does it mean for the former lead (or other entity that passed the Financial Stability Test) to "back" the NewCo? What is required of the entity to do this? Where do their responsibility and liability end? *(continued)*

The Financial Stability Test was to ensure that the PPS Lead or PPS partner within the Lead entity had a demonstrated history of financial management and operations as evidenced through its financial stability. This demonstrated history of financial and organizational performance of the Lead entity was imperative to reasonably anticipate that the Lead entity remained financially viable throughout the duration of DSRIP to help the PPS meet its goals and objectives, as well as the statewide goals and objectives of the DSRIP program.

6. Is there anything to prevent a Safety Net entity from being a sole member of an LLC (or Not-for-Profit) under DSRIP?

No, as long as all other requirements are met.

7. What is required in order to get DOH and CMS "sign-off" for a NewCo to be the PPS Lead Entity?

This will be done through the "NewCo VAP Exception process".

Questions?

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