



## Meeting #5

**Date: November 10, 2015 1:00 PM**

**Location: 5 University Place Rensselaer, NY 12144**

### Attendees:



Regulatory Impact  
Meeting #5 Attenda

### Overview

This was the fifth meeting of the Regulatory Impact Subcommittee (SC). The meeting included the review of final draft recommendations for the following policy issues: Prompt Payment, Civil Monetary Penalties, Medicaid Managed Care Model Contract (Model Contract), and Provider Contract Guidelines. Policy Question 13 regarding De-regulation was also introduced. De-regulation will be discussed in greater detail during Meeting #6 on December 7<sup>th</sup>, 2015.

The full agenda for Meeting #5 included:

1. Welcome and Introduction
2. Recap: Final Recommendations from Meeting #4: Prompt Pay, Civil Monetary Penalties, Model Contract, and Provider Contract Guidelines
3. Presentation on Provider Contract Risk Review Process
4. Discussion of Business Laws and Corporate Practice of Medicine
5. Discussion of Program Integrity and Compliance
6. Discussion of HIPAA and State Privacy Laws
7. Introduction to De-regulation

**Key Discussion Points** (reference the slide deck “Regulatory Impact Subcommittee Meeting 5”)

#### **1) Recap: Recommendations for Prompt Payment, Civil Monetary Penalties; Medicaid Managed Care Model Contract; Provider Contract Guidelines; Provider Contract Risk Review Process**

A brief summary of the main concepts behind Prompt Pay, Civil Monetary Penalties, Medicaid Managed Care Model Contract, Provider Contract Guidelines for MCOs and IPAs, and Provider Contract Risk Review Process were provided along with a recap of SC Meeting #4. The SC members were asked to develop finalized recommendations for the State’s consideration. The SC agreed on the recommendations for Prompt Payment, Civil Monetary Penalties, Model Contract, and Provider Contract Guidelines.

With respect to the Contract Review Process, the SC requested additional details be developed about the Risk Review Tiers and a “menu of options” for the DOH Review Tier (Tier 2) for discussion at Meeting #6.



It was reiterated that if details of a solution are not agreed upon within the SC meetings for any specific issue, it does not necessarily mean that work on the issue has concluded. The SC will be willing to accept comments within a reasonable timeframe after the meetings conclude.

#### *Prompt Payment*

The SC recommended no changes to NYS Prompt Payment laws or regulations. While the issue of Prompt Payment may need to be revisited as the VBP process unfolds, the SC proposes that the present laws and regulations remain in place.

Several topics were discussed including applying Prompt Payment Rules in some VBP arrangements in certain contractual arrangements via the Model Contract and/or Provider Contracting Guidelines. However, the SC concluded that the parties should handle the mechanism for VBP payments as part of their contract negotiations and include the agreed upon conditions in the contract language.

#### *Civil Monetary Penalties*

The SC recommended no change to current NYS Laws or regulations with regards to Civil Monetary Penalties.

#### *Medicaid Managed Care Model Contract*

The SC recommended that the DOH review and consider the SC members' comments and proposed revisions as the DOH amends the Model Contract to accommodate VBP. DOH will consider these comments when negotiating revisions to the Model Contract with the health plan contractors and in discussions with CMS. After consideration of the comments from the SC, DOH will share the updated Model Contract with the public and solicit additional comments before finalization. DOH will post all of the received comments on the DOH website prior to the adoption of the Model Contract.

#### *Provider Contract Guidelines for MCOs, IPAs*

The SC recommended that the DOH review and consider the SC members' comments and proposed revisions as the DOH amends the Provider Contract Guidelines to accommodate VBP. Similar to the Model Contract, the DOH will share the updated Provider Contract Guidelines and comments received to the DOH website prior to finalization.

#### *Provider Contract Risk Review Process (Contracting Risk Tiers)*

The SC continued discussions of the Provider Contract Risk Review Process (Review Process) started in Meeting #5. The SC discussed the "gateway" questions that steer a contract between the different levels of review (i.e., file and use, DOH review, or Multi-Agency review) and the mechanics of the DOH Review (Tier 2).

The SC discussed the application of Regulation 164 and requested a more developed Memorandum of Use (MOU) between DOH and DFS stating that it is imperative for both sides to understand what the contract review requirements are prior to negotiating agreements. To accompany the multi-agency MOU, the SC recommended the development of an additional visual chart to clarify various components of review and approval for contracts involving capitation and DFS review.

The SC members requested that more definition be provided on the actual Tier 2 review process and review requirements (e.g., what additional documentation may be requested by the DOH, financial risk mitigation requirements, etc.). DOH agreed that the Tier 2 review process be efficient but must still effectively safeguard parties from entering into potentially excessive risk arrangements.

DOH agreed to prepare the additional requested contract review detail as requested by the SC for discussion at the final SC meeting on December 7.

## **2) Discussion of Business Laws and Corporate Practice of Medicine**

The SC expressed its concern about the unintended consequences that may arise with corporate ownership of provider practices since many official medical organizations oppose this type of corporate practice. NYS law currently prohibits fee-splitting between medical facilities and individuals or entities which have not been approved as a health care establishment by the DOH and expressly prohibits compensation arrangements involving fees paid as a percentage of, or dependent upon, revenue earned by healthcare professionals.

This risk of implicating fee-splitting laws could be partially mitigated by forming an IPA in a way that ensures professionals and/or unlicensed persons do not influence licensed professionals while providing services to the public. The SC suggested bringing the DOH legal counsel into this discussion or having DOH and a subset of the SC discuss the topic.

The SC discussed a parallel piece of legislation regarding both fee-splitting and business laws that was introduced last year. The discussion of fee-splitting ended with the SC stating that it will consider the existing bill that would allow a broader allowance of fee splitting. In addition, it was suggested by the SC that a workgroup be created to work with the DOH legal counsel. This workgroup would be tasked with developing any statutory changes that the SC wants done and included into Article VII Budget Language.

## **3) Program Integrity**

The SC recommended the formation of a separate workgroup focused on evaluating the VBP impact on program integrity.

At the conclusion of Regulatory Impact SC Meeting #4, the SC requested that DOH create a “Vision Statement” addressing the long-term future for Medicaid Program Integrity (MPI). VBP introduced a number of complexities requiring MPI to adapt. The Vision Statement is in progress and will address, at a high-level, the MPI goals, compliance challenges, responsibilities of the parties, and opportunities for improvement.

The SC noted that existing negative financial incentive concerns under fee-for-service (FFS) may become less worrisome when under VBP Level 1 and 2 agreements. However, it is unclear when program integrity implications are no longer a concern for the entirety of VBP implementation.

**4) HIPAA and State Privacy Laws**

New York’s version of the federal law and its related privacy laws are broader in scope and contain fewer exceptions. Therefore, New York law is more restrictive and affords less flexibility for providers compared to federal law. The success of VBP may be hindered due to these current state laws.

The SC reviewed three options regarding how to change the NYS laws for privacy. The three options for privacy laws were included in the HIPAA issue brief and are as follows: (1) full alignment of NYS laws with HIPAA, (2) creation of exceptions to NYS law, (3) and replacement of existing NYS law.


After reviewing the options for privacy laws alignment, the SC proposed that a list of issues be developed and considered on a one by one basis. For that, a separate workgroup may be needed based on the amount of time and work required to address these issues.





The SC recommended the creation of a workgroup to specifically address privacy law issues.

**5) De-regulation**

It was decided to give the SC members more time to think about the areas where de-regulation may be necessary for smooth implementation of VBP. Comments from the SC will be gathered and brought back for the SC review in Meeting #6.

**Materials distributed during the meeting:**

Document	Description
<p>NYS VBP Regulatory Impact Meeting #5</p>  <p>NYS VBP Reg Impact Meeting #5_Presentat</p>	<p>A presentation deck of policy questions and options for Provider Contract Risk Review Process, Business Laws, Corporate Practice of Medicine, Program Integrity, HIPAA and State Privacy Laws, and an introduction to De-regulation.</p>
<p>Recommendations</p>	<p>These documents contain recommendations on each policy question reviewed in the SC meeting.</p>

<p>HIPAA and State Privacy and Business Laws and Corporate Practice of Medicine Issue Briefs</p>   <p>NYS VBP_RI SC_Issue Brief - HIPAA and Stat NYS VBP_RI SC_Issue Brief - Business Laws</p>	<p>These issue briefs lay out options and considerations on the topics.</p>
<p>Supporting Materials:</p> <p>Limited Liability Company Law and Title VIII Memo in Support of PLLC Bill</p>   <p>Limited Liability Company Law.pdf    Title VIII Memo in Support of PLLC bill.d</p>	<p>Included are: a bill that authorizes certain licensed healthcare professionals to form limited liability companies, and a memo in support of the bill.</p>
<p>Meeting #4 Summary</p>	<p>This document is a summary of the topics covered during SC Meeting #4.</p>

### Key Decisions

- The SC made finalized recommendations on the following:
  - ✓ Medicaid Managed Care Model Contract
  - ✓ Provider Contract Guidelines for MCOs and IPAs
  - ✓ Prompt Payment
  - ✓ Civil Monetary Penalties
- The SC agreed on draft a recommendation for Business Laws and CPOM, Program Integrity, and patient privacy.
- The SC requested comments and feedback for specific regulations that could be discussed at Meeting #6 for De-regulation.

### Action Items:

- Larger slide deck that details a step-by-step Provider Contract Risk Review Process will be sent out for review.
- The SC and DOH will work to further clarify Tier 2 DOH Review as well as financial implications for contracts falling within this Tier.
- SC comments on De-regulation are to be sent to the SC before November 24<sup>th</sup>.



## **Conclusion**

The next SC meeting will be held in Albany on December 7, 2015 and will include:

- 1) Continued discussion of Provider Contract Risk Review Process;
- 2) Draft recommendations for: (1) HIPAA and State Privacy Laws; (2) Program Integrity; (3) Business Laws and Corporate Practice of Medicine; and (4) De-regulation; and
- 3) Close Regulatory Impact SC meetings.