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August 2, 2017

Joy L. Lindo, Director
Office of Legal and Regulatory Compliance
Office of the Commissioner
New Jersey Department of Health
PO Box 360
Trenton, NJ 08625-0360

RE: PRN 2017-083, Hospital Financial Reporting; Hospital Licensing Standards: Patient Rights; Hospital Financial Transparency; Proposed Amendments: N.J.A.C. 8:31B-3.3 and 4.6 and 8:43G-4.1; Proposed New Rules: N.J.A.C. 8:96 49 (NJR 6(1)), June 6, 2017

Dear Ms. Lindo:

On behalf of its 71 acute care hospital members, the New Jersey Hospital Association appreciates the opportunity to provide comments on the Department of Health's proposed hospital transparency rules. The following comments address the proposed amendments to N.J.A.C. 8:31B-3.3 and 4.6 and 8:43G-4.1 and proposed new rules at N.J.A.C. 8:96 pertaining to hospital financial reporting, hospital licensing standards (patient rights) and hospital financial transparency as published in the June 6, 2017, *New Jersey Register*.

NJHA and its members are committed to transparency with their patients and community. For years N.J. hospitals have voluntarily reported charges information and quality data and shared them via a public NJHA website. NJHA has developed numerous resources including the Patient Financial Resources Toolkit to assist members in communicating data and insurance information effectively with healthcare consumers. Scan hospital and health system websites across the state today and you will find voluntary compliance with prior DOH recommendations on this issue.

ANNUAL AUDITED FINANCIAL STATEMENTS

The Department proposes that each hospital submit and post audited annual financial statements. For health care systems that do not issue hospital-specific annual audited financial statements, the department proposes to require that each individual hospital submit and post an annual audited statement of operations.

The vast majority of hospitals in New Jersey are part of larger health systems comprised of multiple entities. These entities may include other acute care hospitals, specialty hospitals, post-acute providers, medical groups, foundations, etc. Currently, 80 percent of hospitals in N.J. are affiliated with systems that include two or more acute care licenses. It is our belief that the proposed regulations should reflect the changing environment as a result of system formations over the last decade.

In addition, some hospitals with multiple acute care campuses operate under a single Medicare provider number or tax ID. Their annual audited statements reflect the activity at all campus locations; breakouts for individual campuses are not available.

NJHA recommends that the DOH revise the proposed requirement to submit and post hospital-specific annual audited financial statements or statements of operations to reflect the complexity of health systems. The Department should accept audited financial statements for hospitals and health systems at the level at which they are prepared and audited.

QUARTERLY UNAUDITED FINANCIAL STATEMENTS

The Department proposes that each hospital submit and post quarterly unaudited financial statements. For healthcare systems that do not issue hospital-specific quarterly unaudited financial statements, the Department proposes to require that each individual hospital submit and post a quarterly unaudited statement of operations.

The Department already requires hospitals to report five “flash” financial indicators on a monthly basis as part of its early warning system. In addition, the Apollo financial information is provided quarterly to the New Jersey Health Care Facility Financing Authority. This information should already provide the state with insight into the financial stability of each hospital.

Unlike annual audited financial statements, there is a lack of standardized criteria for the preparation of quarterly unaudited statements that may result in inconsistencies across hospitals.

In the *Economic Impact* section, the DOH states that, “the proposed new rules requiring disclosure of hospitals’ financial statements could enhance the ability of the people of New Jersey to remain informed about the financial viability of the hospitals in their communities upon which they rely for their health care and/or livelihoods, and to meaningfully participate in early community responses to indications of hospital financial instability.”

If posted publicly, the unstable nature of quarterly unaudited financials may result in public data that is more misleading than informative, leading to more confusion and concern than clarity. A hospital or health system’s performance may fluctuate significantly from quarter to quarter. While some fluctuations may be easily explained (for example, seasonal variations at a hospital located near the Jersey shore), others are more complex. Even if accompanied by the optional explanatory statement, quarterly unaudited financial data is difficult to present in a way that would be meaningful to members of the hospital’s community. We also must be wary of any unintended consequences of posting preliminary data without sufficient context. It would be very detrimental, for example, if consumers made treatment decisions or career choices based on preliminary, unaudited information.

Furthermore, the requirement to submit and post quarterly unaudited financial statements would be administratively burdensome for hospitals to comply with, and would require some hospitals to incur additional costs.

Unless a hospital is already required to produce quarterly unaudited financial statements for other purposes, NJHA recommends that the DOH eliminate the proposed requirement for all hospitals to submit and post quarterly unaudited financial statements. For hospitals and health

systems that already produce such statements, the Department should accept the quarterly unaudited financial statements at the level at which they are prepared and a link to this documentation where it exists in other settings.

PARTICIPATING INSURANCE PLANS

The Department proposes that each hospital post a link to information identifying the health benefits plans in which the hospital participates, and to provide this information in writing to any person upon request. Failure to post will result in a penalty of \$100 per day; failure to provide written information upon request will result in a penalty of \$50 per day.

N.J. hospitals and health systems are committed to helping patients understand their insurance coverage and participating providers, and you will find that this information currently exists on many hospitals and health system websites. **NJHA requests that the DOH add language specifying the timelines associated with these enforcement penalties.** If the list of participating plans changes, how soon would the posted list need to be updated before the \$100 per day penalty begins? How soon must a hospital provide a written copy after a person requests it before the \$50 per day penalty begins? The clarifying language should permit hospitals to answer these and related questions.

ANNUAL PUBLIC MEETING

Pursuant to N.J.S.A. 26:2H-12.50, a hospital “shall, at least annually, conduct a public meeting to discuss issues relating to the operation of the hospital and concerns of the community with respect to the delivery of services at the hospital.” The Department proposes to require hospitals to convene that meeting within 60 days of submitting annual audited financial statements, and to provide copies of those financial statements to attendees of the meeting.

The rationale for these proposals, as stated by the Department in the *Social Impact* section, is to “enhance the ability of the people of New Jersey, particularly in the communities that depend on hospitals’ continued successful operation... to observe and monitor hospitals’ economic viability.”

New Jersey hospitals have been, and will continue to be, compliant with the statutory requirement to host at least one public meeting each year despite sparse public attendance at these meetings. Hospitals have found that the state-mandated agenda topics do not attract attendees. Those hospitals and health systems that have been successful in attracting public attendees have done so by using creative approaches like combining the meeting with an open house, health fair or other event that engages public members in their health. While financial performance is discussed and provided to attendees as directed by the Department’s earlier voluntary recommendations, hospitals and health systems have learned through years of experience with these meetings that consumers are most interested in things such as new programs or services, quality and patient safety, new clinical affiliations and potential merger activity.

As such, NJHA recommends the Department remove the proposed requirement that hospitals must hold their public meetings within 60 days of submitting audited financial statements. With

the proposed posting of audited financial data on the hospital's website, and the availability of audited financial statements at the annual meeting, the public will have ample opportunity to observe and monitor the economic viability of their local hospital.

In addition, since hospitals are required by law to hold a public meeting once a year, the financials provided at such meetings will be the most recent audited statements available (typically less than a year old). Linking the timing of the annual meeting to the release of audited financial statements is arbitrary and unnecessary and could disrupt the success some hospitals and health systems have had in attracting attendees to these meetings.

GENERAL

The Department should clarify that the proposed rules apply to acute care hospitals only. The use of the term "general acute care hospital" in one section (N.J.A.C. 8:96-1.1(b)) and "general hospital" in another (N.J.A.C. 8:96-1.2) may be confusing to rehabilitation hospitals, long term acute care hospitals, and other non-acute and specialty hospital providers.

As stated in the proposed rules:

8:96-1.1 Purpose and scope

(b) This chapter applies to general acute care hospitals that the Department licenses pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq.

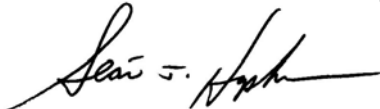
8:96-1.2 Definitions

"Hospital" means a general hospital that the Department licenses pursuant to N.J.A.C. 8:43G.

In addition, the DOH should clarify the purposes for which the dedicated e-mail address, financial.reports@doh.nj.gov, should be used. NJHA recommends that this e-mail be used by hospitals to submit to the Department all information required under these proposed rules.

The New Jersey Hospital Association appreciates the opportunity to comment on the DOH's proposed transparency rules. If you have any questions, please contact me at 609-275-4022 or shopkins@njha.com, or Roger Sarao, vice president, Economic & Financial Information, at 609-275-4026 or rsarao@njha.com.

Sincerely,



Sean J. Hopkins
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New Jersey Hospital Association