

HEALTH

HEALTH SYSTEMS BRANCH

OFFICE OF HEALTH CARE FINANCING

Hospital Financial Transparency

Adopted Amendments: N.J.A.C. 8:96-1.2 and 9.1

Adopted New Rules: N.J.A.C. 8:96-5, 6, 7, and 9.2

Proposed: November 7, 2022, at 54 N.J.R. 2054(a).

Adopted: October 19, 2023, by Kaitlan Baston, MD, MSc, DFASAM, Acting Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Filed: October 19, 2023, as R.2023 d.129, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5, 5.1a, 5.1b, 12.50, and 14; and P.L. 2019, c. 513, § 2.

Effective Date: November 20, 2023.

Expiration Date: February 5, 2025.

Summary of Public Comments and Agency Responses:

The Department of Health (Department) received comments from the following:

1. Christine Stearns, Chief of Government Relations from the New Jersey Hospital Association, Princeton, NJ; and
2. Robin Walton, Inspira Health, Mullica Hill, NJ.

The numbers in parentheses following each comment below correspond to the commenters listed above.

N.J.A.C. 8:96-6.1 Policy for Business Transactions with Interested Persons

COMMENT 1: A commenter states, presumably with respect to proposed new N.J.A.C. 8:96-6.1(a), that the proposed new rule would require “a hospital, regardless of its status as a for-profit or a nonprofit, to submit a report on any business transaction it enters into with an interested person, during its fiscal year, to the Department by the 15th day of the sixth month after the end of the hospital’s fiscal year. This goes beyond the requirement established by P.L. 2019, c. 513. The statute limited the requirement to report [a] business transaction with interested persons to a hospital ‘owned or managed by a for-profit entity.’ Instead, the statute requires a hospital to annually post on its website, upon renewal of its license, ... the most recent public inspection copy of the Internal Revenue Service [(IRS)] Form 990 that is available. [An IRS Form] 990 requires a hospital’s governance, financial, and operating information. A hospital that does not file [an IRS] Form 990 with the Internal Revenue Service ... is required to post all governance, financial, and operating information that would otherwise be reported on [an IRS] Form 990 for the prior tax year. As a result, the requirement in the rule proposal conflicts with the statute.” (1)

RESPONSE: P.L. 2019, c. 513 (approved January 21, 2020), amended N.J.S.A. 26:2H-5.1b, which applies to “general hospitals,” regardless of whether they are for-profit or non-profit, and requires, at subsection a, a general hospital to provide, “such other financial information as the [Department] may request.” P.L. 2019, c. 513, § 2, authorizes the Department to promulgate implementing rules. N.J.S.A. 26:2H-5.1b, at subsection c, which applies to “a hospital that is owned or managed by a for-profit entity” does not limit the Department’s broader authority pursuant to N.J.S.A. 26:2H-

5.1b subsection a to promulgate a rule requiring a general hospital, regardless of whether it is for-profit or non-profit, to submit financial information, including information on business transactions with interested persons.

Moreover, N.J.S.A. 26:2H-5.1b, at paragraph a(2), requires a general hospital, annually to post to its internet website, if it is a non-profit hospital, the most recent public inspection copy of its IRS Form 990 along with all schedules and supporting documentation required to be submitted to the IRS with the IRS Form 990; and, if it is a for-profit hospital that does not file an IRS Form 990, all governance, financial, and operating information that would otherwise be reported on an IRS Form 990, including the information that would be required to be submitted in the schedules and supporting documentation with the IRS Form 990, to the extent that such information exists with respect to the for-profit hospital. IRS Form 990, Schedule L, at Part IV, establishes procedures to report “Business Transactions Involving Interested Persons.” Therefore, proposed new N.J.A.C. 8:96-6.1(a) would be consistent with N.J.S.A. 26:2H-5.1b, at paragraph a(2), by requiring both for-profit and nonprofit hospitals to report business transactions involving interested persons.

Proposed new N.J.A.C. 8:96-6.1 would impose uniform and consistent reporting requirements on hospitals, regardless of whether for-profit or nonprofit, thereby ensuring equitable treatment while maintaining financial transparency. This would help the State to monitor hospitals for financial distress indicators that business transactions with interested persons, ownership interests, or management companies may cause.

For the foregoing reasons, the Department will make no change upon adoption in response to the comment.

COMMENT 2: A commenter states, presumably with respect to proposed new N.J.A.C. 8:96-6.1(a)1 and 2, “the timeline for filing the report is impractical. While May 15th, following the end of an organization’s taxable year, is the deadline for filing [IRS] Form 990, most healthcare organizations file an extension on this deadline and file by November of the same year. Thus, this report would be required to be filed in advance of the deadline to file the Internal Revenue Service Form 990.” (1)

COMMENT 3: A commenter states, presumably with respect to proposed new N.J.A.C. 8:96-6.1(a)1 and 2, “Most of the interested party information is included in the [IRS Form] 990, which is usually completed and filed with the IRS by [November 15] of each year, and posted on our website by [December 31] of each year. The ... proposed rule [would] require [the commenter] to move up [its IRS Form] 990 compilations to have them completed by June versus filing in Quarter 4. This [would] coincide with the need to push up the timing of [its] conflict-of-interest statements.” The commenter suggests, “that the interested person disclosures be timed similarly to the [IRS Form 990] to avoid unnecessary time and effort”.

RESPONSE TO COMMENTS 2 AND 3: The requirement at proposed new N.J.A.C. 8:96-6.1(a), that hospitals establish a policy to report and post business transactions with interested persons in accordance with the deadlines at paragraphs (a)1 and 2, would neither be tied to, nor conflict with, applicable Federal filing deadlines associated with IRS Form 990. However, the Department acknowledges the potential duplicative administrative burden that proposed new N.J.A.C. 8:96-6.1(a)1 and 2 might impose, particularly on non-profit hospitals that file IRS Form 990, in addition to reporting the same information to the Department. Therefore, the Department will change proposed

new N.J.A.C. 8:96-6.1(a)1 and 2 upon adoption to require submission to the Department and concurrent posting on a hospital's website by the 11th month, rather than the sixth month, following the close of a hospital's fiscal year, to coincide with the IRS Form 990 filing deadline.

N.J.A.C. 8:96-7.1 Advance Written Notice of Any Sale, Lease, or Sale-Leaseback Agreement

COMMENT 4: A commenter states, presumably with respect to proposed new N.J.A.C. 8:96-7.1, that the proposed new rule “would clarify [its] pending questions on the sale-leaseback requirements and confirm that [its] interpretation of the statute is appropriate.

(2)

RESPONSE: The Department acknowledges the comment.

COMMENT 5: A commenter states, presumably with respect to proposed new N.J.A.C. 8:96-7.1(a), that this subsection would require a “hospital ... to notify the Department of Health of [the hospital's] intent to sign an agreement to sell or lease land or property on which the hospital is located [no fewer than] 90 days prior to signing an agreement.

While [the commenter recognizes] that this requirement is statutory, ... this prolonged period can be challenging. There are varying requirements of confidentiality connected with transactions[,] such as non-disclosure agreements[,] which prevent any party from disclosing the discussion to outside parties. Some deals are stricter and require a knowledge tracker[,] which is where 10 or fewer people in the entire organization know about the impending deal. The 90 days prior requirement would make such discretion

impossible. If any sensitive and confidential information got out during that time frame, the whole deal could be jeopardized[,] creating hurdles and operational delays.” (1)

COMMENT 6: A commenter states, presumably with respect to proposed new N.J.A.C. 8:96-7.1(a), that its “biggest concern has been and continues to be the 90 days’ advance notice of the hospital’s intent to lease, which also requires a copy of the lease to be submitted, and the fact that [it] typically [enters] into a lease with that much notice, however, these do not happen frequently.”

RESPONSE TO COMMENTS 5 AND 6: The commenter correctly notes in Comment 5 that proposed new N.J.A.C. 8:96-7.1(a) would reiterate the requirement at N.J.S.A. 26:2H-5.1b, at paragraph a(3), that a hospital notify the Department of its intention to sign an agreement to sell or lease land or property on which the hospital is located, no fewer than 90 days prior to signing an agreement. Therefore, the Department is without authority to establish a shorter deadline by which a hospital is to provide the required notice. Based on the foregoing, the Department will make no change upon adoption in response to the comments.

Federal Standards Statement

There are no Federal standards applicable to the adopted amendments and new rules. The Department is not adopting the amendments and new rules pursuant to the authority of, or to implement, comply with, or participate in a program established pursuant to, Federal law or a State law that incorporates or refers to a Federal law, standard, or requirement. The Department adopts the amendments and new rules pursuant to the authority at N.J.S.A. 26:2H-1 et seq., particularly at 26:2H-5, 5.1a, 5.1b, 12.50, and 14; and P.L. 2019, c. 513, § 2 (approved January 21, 2020). Please note

that although a Federal standards analysis is not required, the Department did align its adopted amendments and new rules with Federal standards and definitions included on IRS Form 990, and its various schedules, to the greatest extent possible, given that nonprofit hospitals are already familiar with those requirements and submit information to the Federal government in accordance with them.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 5. OWNERSHIP INTERESTS OF HOSPITALS,
MANAGEMENT COMPANIES, AND RELATED
ORGANIZATIONS

8:96-5.1 Ownership interests of hospitals, management companies,
and related organizations

(a) (No change.)

(b) If the hospital is owned or managed by a for-profit organization, including an entity that has a majority ownership interest in the hospital, the hospital shall, by ***[(within 45 days of the effective date of this rule)]* *January 4, 2024*** and thereafter, upon the filing of an application for the issuance or renewal of a license, provide to the Department:

1. - 8. (No change.)

(c) (No change.)

SUBCHAPTER 6. BUSINESS TRANSACTIONS WITH INTERESTED PERSONS

8:96-6.1 Policy for business transactions with interested persons

(a) Each hospital, regardless of whether it is for-profit or nonprofit, shall establish a policy regarding business transactions with interested persons that requires the hospital, at a minimum, to issue a report *[utilizing]* ***using*** the same form that an I.R.C. § 501(c)(3) organization files as part of its IRS Form 990, Schedule L, Part IV, to report any business transaction it enters into with an interested person, during its fiscal year, that meets or exceeds the reporting threshold, and^{*}:

1. Annually submit the report to the Department^{*} ***annually, by no later than*** the 15th day of the *[sixth]* ***11th*** month after the end of the hospital's fiscal year^{*}:

1. Submit the report to the Department^{*}; and

2. *[Post]* ***Concurrently post*** the report at a conspicuous place on the hospital's website^{*}, by the 15th day of the sixth month after the end of the hospital's fiscal year^{*}.

(b)-(c) (No change from proposal.)