

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

OFFICE OF HEALTH CARE FINANCING

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

Authorized By: Cathleen D. Bennett, Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., particularly N.J.S.A. 26:2H-5, 5.1a, 5.1b, 12.50, and 14.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-083.

Submit written comments by August 4, 2017, electronically to:

<http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail

postmarked by August 4, 2017, to:

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

The agency proposal follows:

Summary

On January 17, 2014, Governor Christie approved P.L. 2013, c. 195, “An Act concerning reporting of certain information by hospitals and supplementing Title 26 of the Revised Statutes” (Act). The Act directs the Commissioner of Health (Commissioner) to “undertake a review of New Jersey’s hospital financial reporting requirements [and to] report any findings and recommendations directly to the Governor” by mid-July 2014. The Act specifically directs the Commissioner to “examine the impact of, and make recommendations on, the following areas for all entities receiving Health Care Subsidy Fund payments from the State: Internal Revenue Service filings, Securities and Exchange Commission filings, and audited financial statements.”

Pursuant to the Act, on May 29, 2014, then-Commissioner Mary O’Dowd, MPH, of the Department of Health (Department), convened a gathering of stakeholders at the offices of the New Jersey Health Care Facilities Financing Authority (HCFFA) in Trenton, New Jersey (conference). Attendees at the conference included five hospital trade organizations, three unions representing hospital employees, three community action groups, a publicly traded for-profit hospital, a trade association for health insurers, and a trade association for nursing homes. In addition, a representative of the office of Senator Loretta Weinberg (D-37) and staff of the Department and the HCFFA attended.

During the conference, stakeholders freely shared their recommendations and reservations concerning hospital financial transparency. Thereafter, at the Commissioner's invitation, some stakeholders submitted written remarks to supplement their comments at the conference. On July 17, 2014, following consideration of the testimony of persons who testified at legislative hearings on the Act, and the remarks that stakeholders made at the conference and thereafter in writing, the Commissioner issued a report of her findings and recommendations relating to New Jersey hospital financial reporting requirements to the Governor entitled *Hospital Financial Transparency: Department of Health Recommendation on Hospital Financial Transparency* (hereinafter *Transparency Report*), available on the Health Care Transparency web page of the Department at http://www.nj.gov/health/healthcare_transparency.shtml (direct link is at http://www.nj.gov/health/documents/hospital_transparency_report.pdf). The *Transparency Report* at Appendix A contains a complete list of attendees to the May 29, 2014 stakeholder conference. *Transparency Report* at 22.

Following issuance of the report, in late 2014, then-Commissioner O'Dowd, accompanied by staff of the Department and the HCFFA, attended a meeting with members of the New Jersey Hospital Association to discuss the *Transparency Report* and to encourage the hospitals to undertake voluntary implementation of the recommendations contained therein, pending the development and implementation of rulemaking to establish those recommendations as requirements. Then-Commissioner O'Dowd reiterated this call for voluntary implementation in a December 17, 2014, memorandum to hospital chief executive officers Statewide. Leadership of the

Department and the HCFFA continue to engage with members of the stakeholder community to review and consider the reserved issues.

Pursuant to the authority that the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., confers on the Commissioner, particularly at N.J.S.A. 26:2H-5, 5.1a, 5.1b, 12.50, and 14, the Department proposes new N.J.A.C. 8:96 to establish standards implementing certain recommendations of the *Transparency Report*.

Because the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Proposed new Subchapter 1 would establish general provisions. Proposed new N.J.A.C. 8:96-1.1 would establish the purpose and scope of the chapter, which is to establish financial transparency standards applicable to general acute care hospitals that the Department licenses pursuant to N.J.S.A. 26:2H-1 et seq. Proposed new N.J.A.C. 8:96-1.2 would establish definitions of the following words and terms that the chapter uses: “American Institute of Certified Public Accountants” or “AICPA,” “audited,” “Department,” “Electronic Data Gathering Analysis and Retrieval system” or “EDGAR system,” “Electronic Municipal Market Access system” or “EMMA® system,” “financial statements,” “generally accepted accounting principles” or “GAAP,” “generally accepted auditing standards” or “GAAS,” “health benefits plan,” “hospital,” “reporting period,” “statement of operations or income,” “system hospital,” and “unaudited.”

Proposed new Subchapter 2 would implement the *Transparency Report* recommendations for disclosure of hospitals’ financial statements. *Transparency Report* at 13-15. N.J.S.A. 26:2H-5.1b requires hospitals to “provide monthly unaudited

financial information and annual financial statements to the [Department], and such other financial information as the department may request[.]” Proposed new N.J.A.C. 8:96-2.1(a) and (b) would require a hospital, within 180 days of the close of its respective reporting period, to contemporaneously submit to the Department, and post to its websites, its annual audited financial statements. The Department proposes a corresponding amendment at existing N.J.A.C. 8:31B-4.6 to delete the redundant, and potentially conflicting, requirement that a hospital submit its audited annual financial statements to the Department “by June 30 of each year.”

Proposed new N.J.A.C. 8:96-2.1(a)1 would require New Jersey hospitals that are part of a system comprising multiple hospitals (to be defined as “system hospitals” at proposed new N.J.A.C. 8:96-1.2), or the health care system itself on behalf of the system hospital, to issue, submit to the Department, and post to each system hospital’s website, an annual audited statement of operations or income with respect to the system hospital, if the health care system does not otherwise issue hospital-specific annual audited financial statements. This obligation would be in addition to the health care system itself submitting its annual audited financial statements to the Department pursuant to proposed new N.J.A.C. 8:96-2.1(a) and (b). Proposed new N.J.A.C. 8:96-2.1(b) would require the website postings to be direct links to the financial statements and, if applicable, the statement of operations or income, either as stand-alone documents or at the page upon which they appear in either the EDGAR or EMMA® systems.

The Electronic Data Gathering Analysis and Retrieval system, or EDGAR system, is an online web-based platform that the United States Securities and

Exchange Commission (SEC) operates. The EDGAR system provides free public access to financial information and operations contained in required and elective filings that corporations make to the SEC through the EDGAR system.

The Electronic Municipal Market Access system, or EMMA® system, is an online web-based platform that the Municipal Securities Rulemaking Board (MSRB) operates. The EMMA® system serves as a centralized online source for free access to, and the official repository for, transparency data and educational materials about the municipal securities market, and official statements and disclosures about municipal securities.

Proposed new N.J.A.C. 8:96-2.2(a) would require hospitals, within 45 days of the close of a fiscal quarter, to issue, and submit to the Department, unaudited quarterly financial statements addressing financial information through that fiscal quarter.

Proposed new N.J.A.C. 8:96-2.2(a)1 would require a system hospital or a health care system itself, on behalf of the system hospital, to issue, and submit to the Department, within 45 days of the close of a fiscal quarter, a separate unaudited quarterly statement of operations or income with respect to each system hospital, if the health care system does not otherwise issue hospital-specific quarterly unaudited financial statements.

Proposed new N.J.A.C. 8:96-2.2(b) would require a hospital, within the earlier of either 15 days of submitting its financial statements or, if applicable, a statement of operations or income, to the Department pursuant to subsection (a), or 60 days of the close of the fiscal quarter that they address, to post on the home page of its website direct links to its financial statements or, if applicable, the statement of operations or income, either as stand-alone documents or at the page upon which they appear in either the EDGAR or EMMA® systems.

As the *Transparency Report* discusses, certain for-profit hospitals of which the stock is traded publicly or privately, and certain not-for-profit hospitals on behalf of which municipal bonds are issued, are subject to disclosure standards such as those that the SEC administers. *Transparency Report* at 6-8. The SEC requires these entities to make certain disclosures to ensure that existing and potential holders or investors have relevant information to make informed decisions in their purchase and sale of these securities (hospital stock and municipal bonds). *Ibid.*; see 15 U.S.C. §§ 78m and 78o and 17 CFR §§ 240.15c2-12 and 249.310.

The *Transparency Report* identifies concerns that some hospitals articulated with respect to the Department requiring additional disclosure by hospitals. *Transparency Report* at 12. Hospitals generally asserted that representations contained in unaudited quarterly financial statements are by their nature interim and preliminary, and can reflect proprietary business information that could give an advantage to competitors or bidders. *Ibid.* Thus, the hospitals asserted, public disclosure could confuse or mislead the public and the securities market, prejudice a hospital competitively, and impede flexibility in business decision-making. *Ibid.*

Then-Commissioner O'Dowd, in her December 17, 2014, memorandum to the hospitals' chief executive officers, notes that in "very limited cases," the public posting of hospitals' quarterly financial statements "may conflict with SEC or other federal requirements. In such cases, the conflicting requirement should be brought to the attention of the Department. With regard to the unaudited nature of Quarterly Financial Statements, hospitals may add disclaimer language to their website where they post Quarterly Financial Statements." Thus, the then-Commissioner acknowledged the

hospitals' concerns as to the need for compliance with applicable Federal laws governing disclosure accuracy.

Consistent with this acknowledgment, proposed new N.J.A.C. 8:96-2.2(c) would authorize hospitals to elect to post, with or adjacent to the financial statements and, if applicable, the statement of operations or income, that they post pursuant to proposed new N.J.A.C. 8:96-2.2(b), an accurate statement that highlights and describes the unaudited nature thereof and any caveat associated therewith. In addition, proposed new N.J.A.C. 8:96-2.2(d) would authorize hospitals to apply for a waiver of the obligation, at proposed new N.J.A.C. 8:96-2.2(b), to post unaudited quarterly financial statements and/or, if applicable, the unaudited quarterly statement of operations or income, provided they apply for the waiver at least 90 days in advance of the posting deadline and identify the applicable standard with which disclosure would conflict. Waiver would not be available with respect to the obligation to issue, and submit to the Department, unaudited quarterly financial statements and, if applicable, the unaudited quarterly statement of operations or income.

During the Department's meetings with stakeholders, hospital representatives asserted that unaudited financial statements might reflect proprietary business information that might give an advantage to competitors or bidders if publicly available, but did not supply examples of this type of information or evidence that this would be a significant issue. Unaudited quarterly financial statements and unaudited quarterly statements of operations or income submitted to the Department might be exempt from public access and disclosure under the law governing public access to government records, N.J.S.A. 47:1A-1 et seq., if a waiver application pursuant to proposed new

N.J.A.C. 8:96-2.2(d) were to identify cognizable grounds for their exclusion from being “government records” subject to that law.

Proposed new Subchapter 3 would address the public meeting that N.J.S.A. 26:2H-12.50 requires hospitals to convene at least annually. Proposed new N.J.A.C. 8:96-3.1 would require hospitals to convene that meeting within 60 days of submission of audited annual financial statements and, if applicable, an annual audited statement of operations or income, to the Department, and to provide copies thereof to attendees at that meeting.

Proposed new Subchapter 4 would implement the *Transparency Report* recommendations for disclosure of hospitals’ participation in insurance networks. *Transparency Report* at 19. Proposed new N.J.A.C. 8:96-4.1(a) would require hospitals to post, in a conspicuous place on the home pages of their respective websites, a link to information, of which they maintain the accuracy, identifying the health benefit plans in which the hospital participates. Proposed new N.J.A.C. 8:96-4.1(b) would require hospitals to provide a written version of this information to any person on request. The Department proposes to amend N.J.A.C. 8:43G-4.1 to identify as a patient right the information that hospitals are to provide pursuant to proposed new Subchapter 4. The Department proposes technical amendments at N.J.A.C. 8:43G-4.1 to delete redundancy, improve grammar, and conform to New Jersey Administrative Code convention for use of the present tense.

Proposed new N.J.A.C. 8:96-2.3 and 4.2 would require hospitals to notify the Department of the occurrence of new or amended internet postings that the chapter requires by transmitting an e-mail containing a link to the posting to a designated

Department e-mail account. This would enable the Department to monitor and track hospitals' timely compliance with posting obligations.

The Department proposes to reserve Subchapters 5 through 8.

Proposed new Subchapter 9 would establish enforcement remedies for hospitals' noncompliance with this chapter. Proposed new N.J.A.C. 8:96-9.1(a) would cross-reference to the processes for enforcement applicable to all licensed health care facilities at N.J.A.C. 8:43E-3 as applicable to this chapter, and establish the available penalties for noncompliance, in accordance with the following schedule:

Failure of a hospital to:	Fine until compliance occurs:
Submit audited annual financial statements or, if applicable, audited annual statements of income or operations, to the Department in accordance with N.J.A.C. 8:96-2.1(a)	\$100.00 per day
Post audited annual financial statements or, if applicable, audited annual statements of income or operations, to its website in accordance with N.J.A.C. 8:96-2.1(b)	\$100.00 per day
Submit unaudited quarterly financial statements or, if applicable, unaudited quarterly statements of income or operations, to the Department in accordance with N.J.A.C. 8:96-2.2(a)	\$50.00 per day

Post unaudited quarterly financial statements or, if applicable, unaudited quarterly statements of income or operations, to its website in accordance with N.J.A.C. 8:96-2.2(b)	\$50.00 per day
Convene a public meeting within 60 days of submission to the Department of audited annual financial statements and/or audited annual statements of income or operations with respect to system hospitals in accordance with N.J.A.C. 8:96-3.1(a)	\$100.00 per day
Make available, to attendees at the public meeting convened pursuant to N.J.A.C. 8:96-3.1, copies of audited annual financial statements and/or audited annual statements of income or operations with respect to system hospitals	\$1,000 per violation
Post to a hospital's website information identifying the health benefits plans in which the hospital participates in accordance with N.J.A.C. 8:96-4.1(a)	\$100.00 per day
Provide health benefits plan information to any person on request pursuant to N.J.A.C. 8:96-4.1(b)	\$50.00 per day

The Department proposes for amendment at existing N.J.A.C. 8:31B-3.3(b) to delete the extraneous descriptor of unaudited financial statements as "internal," and to

update the contact information for the Office within the Department to which reports are submitted.

The Department proposes a corresponding amendment at existing N.J.A.C. 8:31B-3.3(c) to delete a fine applicable to hospitals for late submission of audited annual financial statements that would be redundant of the fine at proposed new N.J.A.C. 8:96-9.1(a)1.

Proposed new N.J.A.C. 8:96-9.1(b) would identify factors and mitigating circumstances the Department would consider in determining to assess less than the full available penalty in particular cases. These factors are generally consistent with the factors the Department considers pursuant to N.J.A.C. 8:43E-3.4(b) in assessing civil monetary penalties available for violations of N.J.A.C. 8:43E, the General Licensure Procedures and Standards Applicable to All Licensed Facilities.

Social Impact

The Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., obliges the Department to undertake regulatory activities necessary to ensure that the people of New Jersey continue to have access to appropriate, high quality, and affordable health care services. If a hospital is in financial distress or becomes insolvent, interruptions of services and closure are possible outcomes. Sudden and unplanned interruptions of services and hospital closures can have immeasurable negative social impacts on the people in the surrounding community and Statewide, such as interruption of access to appropriate, high quality, and affordable health care.

Negative social impacts also can include impairment of the livelihoods of people whose economic well-being depends on the hospital continuing to operate successfully,

such as hospital staff and surrounding local businesses, and imposition of increased and unplanned strain on the resources of neighboring communities that must make up for the unavailability of services that were formerly provided by the closed hospital.

The proposed new rules that would require public disclosure of hospitals' financial statements, identify when hospitals are to hold public meetings compliant with N.J.S.A. 26:2H-12.50, and require dissemination at those meetings of audited annual financial statements, and/or audited annual statements of income or operations with respect to system hospitals, would enhance the ability of the people of New Jersey, particularly in the communities that depend on hospitals' continued successful operation for the reasons described above, to observe and monitor hospitals' economic viability. This could enhance informed and meaningful public participation in early community responses to perceived hospital financial distress before unplanned closures occur.

The proposed new rules requiring hospitals to identify the health benefits plans in which they participate, and the proposed amendment establishing access to this information as a patient right, would have positive social impacts. They would enhance the ability of consumers of hospital services that insurance covers to make informed choices in the selection of hospitals at which to receive those services and avoid unintended incurrences of debts associated with unknowingly receiving care at out-of-network hospitals.

The proposed establishment of enforcement penalties and grounds for mitigation thereof would encourage compliance with this chapter.

Economic Impact

The proposed amendments and new rules would have an economic impact on hospitals subject to this chapter. Hospitals would incur professional services costs associated with preparation and auditing of financial statements by independent certified public accountants. All hospitals subject to this chapter already incur these expenses as a routine business financial accounting cost, and to comply with N.J.S.A. 26:2H-1 et seq., particularly at 5, 5.1a, and 5.1b, N.J.A.C. 8:31B, and applicable Federal disclosure standards, which the Federal Standards Statement, below, describes. Multi-health care systems may incur some additional costs to provide audited annual and unaudited quarterly statements of operations or income for system hospitals in addition to those for the consolidated health care system.

Hospitals may incur costs for the professional services of information technology and administrative staff, and copying costs, to assemble, maintain the accuracy of, post to their websites, disseminate copies of, and submit to the Department, financial statements and/or statements of operations or income and/or health benefits plan participation information.

As described in the Social Impact, above, 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. Early informed public participation may help communities to avoid sudden, unplanned hospital closures and the negative economic impacts that stem therefrom,

such as increased costs to obtain health care, loss of jobs, erosion of the financial stability of workers' retirement plans, and impairment of the economies of the communities surrounding closed hospitals, to the detriment of local providers of ancillary health care services (like physicians' offices, durable equipment providers, pharmacies, and ambulance services) and local businesses that typically depend on hospital-related business, such as restaurants, florists, and gift shops.

The proposed new rules requiring hospitals to identify the health benefits plans in which they participate, and the proposed amendment identifying access to this information as a patient right, would enhance the ability of consumers of hospital services that are covered by insurance to make informed choices in the selection of hospitals at which to receive those services and help them to avoid unintended incurrences of debts associated with unknowingly receiving care at out-of-network hospitals.

The proposed amendments and new rules establishing enforcement penalties would result in noncompliant hospitals incurring financial sanctions, as the Summary above describes, and potentially incurring legal fees associated with defending against their imposition. The penalties would be subject to reduction on consideration of the proposed mitigating factors.

The Department would incur administrative expenses associated with overseeing hospitals' compliance with the proposed amendments and new rules, such as in reviewing waiver requests and undertaking enforcement action, as may be appropriate.

Federal Standards Statement

The proposed amendments and new rules would establish standards for hospitals to file with the Department and post to their websites their financial statements prepared in accordance with GAAP. Some or all of the hospitals subject to this chapter, depending on their respective corporate or business structures, are subject to standards that the SEC and the MSRB administer governing the required content of corporate utterances, such as financial statements. See 15 U.S.C. §§ 78m and 78o and 17 CFR 240.15c2-12 and 249.310. The proposed amendments and new rules would be consistent with those laws inasmuch as the SEC and the MSRB recognize GAAP as an authoritative standard for the presentation of financial statements. See Securities and Exchange Commission, *Commission Guidance Regarding the Financial Accounting Standards Board's Accounting Standards Codification*, Release Nos. 33-9062A, 34-60519A, and FR-80A (August 19, 2009; effective August 25, 2009), available at <https://www.sec.gov/rules/interp/2009/33-9062a.pdf>; MSRB Rule G-32; MSRB Notice 2010-15 (June 2, 2010), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-15.aspx>; MSRB Notice 2010-32 (August 27, 2010), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-32.aspx?n=1>; and United States Government Accountability Office, "Dodd-Frank Wall Street Reform Act: Role of the Governmental Accounting Standards Board in the Municipal Securities Markets and Its Past Funding," GAO-11-267R (January 18, 2011), available at <http://www.gao.gov/products/GAO-11-267R> ("GASB establishes standards of accounting and financial reporting for [State] and local government[s] [of the United States of America]. Established in 1984 as an operating

component of the Financial Accounting Foundation ... GASB is recognized by the American Institute of Certified Public Accountants as the body that sets generally accepted accounting principles (GAAP) for state and local governments.”).

Proposed new N.J.A.C. 8:96-2.2 would provide a mechanism by which hospitals could apply to the Department for waiver of the obligation to post unaudited quarterly financial statements, if posting would violate applicable Federal standards for disclosure accuracy. Thus, to the extent SEC and MSRB standards addressing disclosures in financial statements may be applicable Federal standards, the proposed amendments and new rules would meet, but neither conflict with nor exceed, those standards.

Except as described above, there are no Federal standards applicable to the proposed amendments and new rules. The Department is not proposing the amendments and new rules under the authority of, or to implement, comply with, or participate in a program established under, Federal law or a State law that incorporates or refers to a Federal law, standard, or requirement. The Department proposes the amendments and new rules under the authority of N.J.S.A. 26:2H-1 et seq., particularly at 26:2H-5, 5.1a, 5.1b, 12.50, and 14. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not expect that the proposed amendments and new rules would result in the creation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments and new rules would not have an impact on the agriculture industry of the State.

Regulatory Flexibility Statement

The proposed amendments and new rules would impose requirements that are applicable only to hospitals that the Department licenses, all of which employ 100 or more full-time employees, and, thus, none of which are small businesses within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The proposed amendments and new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that they would evoke a change in the average costs associated with housing, because the proposed amendments and new rules would establish disclosure standards that are applicable only to hospitals that the Department licenses and would have no impact on housing costs.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that they would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the proposed amendments and new rules would impose disclosure standards that are applicable only to hospitals that the Department licenses and would have no impact on development or housing.

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

CHAPTER 31B

HOSPITAL FINANCIAL REPORTING

SUBCHAPTER 3. FINANCIAL MONITORING AND REPORTING REGULATIONS

8:31B-3.3 Uniform reporting: current costs and other financial data; **sanctions for noncompliance**

(a) (No change.)

(b) In addition to (a) above, hospitals shall submit, on a quarterly basis, unaudited financial and utilization data to the Department. The data shall be submitted within 60 days from the end of each calendar quarter. Data required to be submitted shall be specified by the Department but shall not exceed the data included in the B-2, L-1, and L-3 forms from the New Jersey Acute Care Hospital Cost Report. Hospitals shall submit information electronically in a format compatible with Department specifications. The information shall agree with the hospital's [internal] unaudited financial statements. Except as otherwise provided in these rules, the information shall be consistent with Generally Accepted Accounting Principles (GAAP). The quarterly data submission specification can be obtained from the Director, **Office of Hospital [Financial Reporting & Support] Finance and Charity Care, NJ Department of Health**, PO Box 360, Trenton, NJ 08625-0360.

(c) Late submission of current cost [and], financial, and utilization data, as [defined] **described** in (b) above and N.J.A.C. 8:31B-4.6(c), [including Audited Financial Statements,] will result in a penalty for each [working] **calendar** day past the [appropriate] **applicable** submission date. [A]

1. The Department will assess a civil monetary penalty, not to exceed \$1,000 for each [working] **calendar** day in which [the] **a** hospital is not in compliance [will be assessed by the Department], for late submission of [the Acute Care Hospital Cost Reports] **acute care hospital cost reports**. [A fine of]

2. The Department will assess a civil monetary penalty, not to exceed \$50.00 for each [working] **calendar** day in which [the] **a** hospital is not in compliance [will be assessed by the Department], for late submission of quarterly financial and utilization data specified in (b) above.

3. All of the specified forms, containing the required information, are necessary for a submission to be considered complete. [A separate fine of \$100.00 for each working day in which the hospital is not in compliance will be assessed for late submission of the hospital's final audited Financial Statement.]

SUBCHAPTER 4. FINANCIAL ELEMENTS AND REPORTING

8:31B-4.6 Reporting period

(a) – (b) (No change.)

(c) Each hospital's Acute Care Hospital Cost Report submission for the most recent reporting period is due on June 30 of the following calendar year. [Each hospital's most recent Annual Audited Financial Statement is due on June 30 of the following calendar year.] Failure to [meet these time frames] **submit by this date** will result in **civil monetary** penalties as stated in N.J.A.C. 8:31B-3.3.

CHAPTER 43G

HOSPITAL LICENSING STANDARDS

SUBCHAPTER 4. PATIENT RIGHTS

8:43G-4.1 Patient rights

(a) [Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The] **A** hospital administrator shall [be responsible for developing] **develop** and [implementing] **implement** policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. [These rights shall include] **Every New Jersey hospital patient has** at least the following **rights, none of which a hospital or any of its staff shall abridge:**

1. - 29. (No change.)

30. To information identifying the health benefit plans in which a hospital participates, in accordance with N.J.A.C. 8:96-4;

Recodify existing 30. – 31. as **31. – 32.** (No change in text.)

CHAPTER 96

HOSPITAL FINANCIAL TRANSPARENCY

SUBCHAPTER 1. GENERAL PROVISIONS

8:96-1.1 Purpose and scope

(a) The purpose of this chapter is to establish hospital financial transparency standards in accordance with N.J.S.A. 26:2H-1 et seq.

(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

(a) The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“American Institute of Certified Public Accountants” or “AICPA” means the entity by that name for which the contact information is AICPA, 220 Leigh Farm Road, Durham, NC 27707-8110, telephone (888) 777-7077, telefacsimile (800) 362-5066, website: <http://www.aicpa.org>.

“Audited,” as used to describe financial statements, or a statement of operations or income, means that an independent certified public accountant (ICPA) audited the subject document(s) using GAAS, and attested thereto as presented in accordance with GAAP.

“Department” means the New Jersey Department of Health, for which the contact information for submissions that this chapter requires is:

1. By regular mail:

**Hospital Finance and Charity Care Program
New Jersey Department of Health
PO Box 360
Trenton, NJ 08625-0360**

2. By overnight delivery service or hand delivery:

**Hospital Finance and Charity Care Program
New Jersey Department of Health
225 East State Street, 2nd Floor, West Wing**

Trenton, NJ 08608-1800

3. By electronic mail: financial.reports@doh.nj.gov

“Electronic Data Gathering Analysis and Retrieval system” or “EDGAR system” means an online web-based platform that the United States Securities and Exchange Commission operates at <https://www.sec.gov/edgar.shtml>.

“Electronic Municipal Market Access system” or “EMMA® system” means an online web-based platform that the Municipal Securities Rulemaking Board operates at <http://emma.msrb.org>.

“Financial statements” means, collectively, the statements, schedules, and notes that GAAP requires for presentation of financial statements.

“Generally accepted accounting principles” or “GAAP” means the accounting principles that a reporting entity determines to be applicable, and that are generally accepted in the United States as authoritative by:

1. The Financial Accounting Standards Board (FASB) with respect to nongovernmental entities, as articulated in the *Financial Accounting Standards Board Accounting Standards Codification®* (2009), as amended and supplemented, available at www.fasb.org, and from the FASB at 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116; or

2. The Governmental Accounting Standards Board (GASB) with respect to State and local governmental entities, as articulated in the *GASB Codification of Governmental Accounting and Financial Reporting Standards* (2017), as amended and supplemented, available at

www.gasb.org, and from the GASB at 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116.

“Generally accepted auditing standards” or “GAAS” means the auditing standards that are generally accepted in the United States as authoritative, as specified in the AICPA *Professional Standards* (2015), as amended and supplemented, available from the AICPA.

“Health benefits plan” means a plan that pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier, but does not include the following plans, policies, or contracts: Medicaid, Medicare, Medicare Advantage, accident only, credit, disability, long-term care, TRICARE supplement coverage, coverage arising out of a workers’ compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L. 1972, c. 70 (N.J.S.A. 39:6A-1 et seq.), a dental plan as defined pursuant to section 1 of P.L. 2014, c. 70 (N.J.S.A. 26:2S-26), and hospital confinement indemnity coverage.

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

“Reporting period” means the reporting period a hospital specifies pursuant to N.J.A.C. 8:31B-4.6.

“Statement of operations or income” means statement of operations or income, as GAAP defines and/or describes that term, also commonly referred to

as statement of operations, income statement, statement of revenues and expenses, earnings statement, or profit and loss statement.

“System hospital” means a hospital that is part of a network or system of hospitals and/or other health care facilities that commonly is referred to as a health care system.

“Unaudited,” as used to describe financial statements, or a statement of operations or income, means that an ICPA neither audited the subject document(s) using GAAS, nor attested thereto as presented in accordance with GAAP.

SUBCHAPTER 2. FINANCIAL STATEMENTS

8:96-2.1 Issuance, submission to the Department, and internet posting of audited annual financial statements

(a) Within 180 days of the close of its reporting period, a hospital shall submit audited annual financial statements for that period to the Department pursuant to N.J.S.A. 26:2H-5.1b.

1. With respect to a health care system that does not issue hospital-specific audited annual financial statements for each of its system hospitals:

i. The system hospital or the health care system on behalf of the system hospital shall issue, submit to the Department, and post to each system hospital’s website, an annual audited statement of operations or income, with respect to the system hospital; and

ii. The health care system shall submit to the Department annual audited financial statements for the health care system.

(b) Concurrent with the submission thereof to the Department in accordance with (a) above, a hospital shall post on the home page of its website direct links to its audited annual financial statements or, in the case of a hospital system that does not issue hospital-specific audited annual financial statements for each of its system hospitals, an annual audited statement of operations or income, with respect to the system hospital:

1. As a stand-alone document; or

2. At the page upon which they appear in either the EMMA® or the EDGAR systems.

8:96-2.2 Issuance, submission to the Department, and internet posting of unaudited quarterly financial statements; waiver

(a) Within 45 days of the close of each quarter of its reporting period, a hospital shall submit to the Department its cumulative unaudited quarterly financial statements through that quarter.

1. With respect to a health care system that does not issue hospital-specific cumulative unaudited quarterly financial statements for each of its system hospitals, a system hospital or the health care system on behalf of the system hospital shall submit to the Department an unaudited quarterly statement of operations or income, with respect to the system hospital, in accordance with (a) above.

(b) Subject to (c) and (d) below, within the earlier of either 15 days of the submission thereof to the Department pursuant to (a) above, or 60 days of the close of a reporting period quarter, a hospital shall post on the home page of its website direct links to its cumulative unaudited quarterly financial statements or, in the case of a health care system that does not issue hospital-specific unaudited quarterly financial statements for each of its system hospitals, an unaudited quarterly statement of operations or income, with respect to the system hospital:

1. As a stand-alone document; or

2. At the page upon which they appear in either the EMMA® or the EDGAR systems.

(c) Each hospital can elect to post, with or adjacent to the financial statements, or, if applicable, the statement of operations or income, that it posts pursuant to (b) above, an accurate statement that highlights and describes the unaudited nature thereof and any caveat associated therewith.

(d) A hospital and/or health care system can elect to apply to the Department for a waiver of compliance with (b) above on the grounds that posting unaudited financial statements and/or, if applicable, an unaudited statement of operations or income, would conflict with applicable filing and disclosure standards, or other applicable law.

1. To apply for a waiver pursuant to (d) above, a hospital and/or health care system shall submit a waiver application to the Department using form CN-28,

which is available at N.J.A.C. 8:37 Appendix B and the Department's forms page at www.nj.gov/health/forms:

i. At least 90 days prior to the date by which this section otherwise would require posting of unaudited quarterly financial statements or, if applicable, an unaudited quarterly statement of operations or income; and ii. That contains citations to the applicable standards and/or laws with which the applicant asserts posting would conflict, and a description of how posting would conflict therewith.

2. The Department will grant a waiver application if it determines that posting the unaudited quarterly financial statements or, if applicable, the unaudited statement of operations or income, would, or is likely to, conflict with applicable filing and disclosure standards, and/or other applicable law.

8:96-2.3 Notice to Department of internet posting

Upon making or amending an internet posting that this subchapter requires, a hospital concurrently shall notify the Department of the occurrence of the posting by transmitting an e-mail containing a link to the posting to the following e-mail address: financial.reports@doh.nj.gov.

SUBCHAPTER 3. PUBLIC MEETING PURSUANT TO N.J.S.A. 26:2H-12.50

8:96-3.1 Public meeting pursuant to N.J.S.A. 26:2H-12.50; availability of audited annual financial statements to attendees

A hospital shall convene a public meeting pursuant to N.J.S.A. 26:2H-12.50 within 60 days of its submission to the Department of its annual audited financial

statements, and, if applicable, its annual audited statement of operations or income with respect to system hospitals, pursuant to N.J.A.C. 8:96-2.1, and shall make available copies thereof, in sufficient quantities, to attendees at that meeting.

SUBCHAPTER 4. DISCLOSURE OF HOSPITAL PARTICIPATION AND NON-PARTICIPATION IN INSURANCE NETWORKS

8:96-4.1 Hospitals to disclose participation and non-participation in health benefits plans

(a) A hospital shall post in a conspicuous place on the home page of its website a link to information, of which it maintains the accuracy, identifying the health benefits plans in which the hospital participates.

(b) A hospital shall provide in writing the information it posts pursuant to (a) above to any person upon written, electronic, telephonic, or in-person request therefor.

8:96-4.2 Notice to Department of internet posting

Upon making or amending an internet posting that N.J.A.C. 8:96-4.1 requires, a hospital concurrently shall notify the Department of the occurrence of the posting by transmitting an e-mail containing a link to the posting to the following e-mail address: financial.reports@doh.nj.gov.

SUBCHAPTERS 5. THROUGH 8. (RESERVED)

SUBCHAPTER 9. ENFORCEMENT REMEDIES

8:96-9.1 Enforcement remedies and procedures

(a) In accordance with applicable enforcement procedures, and in addition to available enforcement remedies at N.J.A.C. 8:43E-3, and subject to (b) below, the Department may assess civil monetary penalties pursuant to N.J.S.A. 26:2H-13 and 14 for violations of this chapter as follows:

1. For failure to submit audited annual financial statements or, if applicable, an audited annual statement of operations or income, in accordance with N.J.A.C. 8:96-2.1(a), \$100.00 per day until compliance occurs;

2. For failure to post audited annual financial statements or, if applicable, an audited annual statement of operations or income, in accordance with N.J.A.C. 8:96-2.1(b), \$100.00 per day until compliance occurs;

3. For failure to submit unaudited quarterly financial statements or, if applicable, an unaudited quarterly statement of operations or income, to the Department in accordance with N.J.A.C. 8:96-2.2(a), \$50.00 per day until compliance occurs;

4. For failure to post unaudited quarterly financial statements or, if applicable, an unaudited quarterly statement of operations or income, in accordance with N.J.A.C. 8:96-2.2(b), and subject to the Department having

granted a waiver pursuant to N.J.A.C. 8:96-2.2(d), \$50.00 per day until compliance occurs;

5. For failure to convene a public meeting pursuant to N.J.A.C. 8:96-3.1, \$100.00 per day until compliance occurs;

6. For failure to make available, to attendees at the public meeting convened pursuant to N.J.A.C. 8:96-3.1, copies of audited annual financial statements and/or, if applicable, the audited annual statement of operations or income with respect to a system hospital, in accordance with that section, \$1,000 per violation;

7. For failure to post health benefits plan information pursuant to N.J.A.C. 8:96-4.1(a), \$100.00 per day until compliance occurs; and

8. For failure to provide health benefits plan information to any person on request pursuant to N.J.A.C. 8:96-4.1(b), \$50.00 per day until compliance occurs.

(b) The Department may assess a penalty that is less than the maximum amount authorized pursuant to (a) above upon consideration of:

1. A hospital's compliance history;
2. The number, frequency, and/or severity of the violations;
3. The measures a hospital takes to mitigate the effects of a violation and/or to prevent future violations;
4. The deterrent effect of the penalty; and/or
5. Mitigating circumstances that are particular to the hospital or the violation.

