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INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 22, DIVISION 7

CHAPTER 8.2 Hospital Community Benefits Plan Reports
Sections: 95100-95115

I. BACKGROUND INFORMATION

Assembly Bill (AB) 204 (Chapter 535, Statutes of 2019) made several changes to California law to address hospitals' community benefits plan reporting.

The Department of Health Care Access and Information (Department), formerly the Office of Statewide Health Planning and Development (OSHPD) is the primary repository of healthcare data in California. The Department collects facility-level financial, utilization, patient-level, and other healthcare related data from over 9,000 licensed healthcare facilities in California. Since 1996, nonrural, private nonprofit hospitals were required to conduct a community health needs assessment every three years. The Department mandated these hospitals to annually submit their community benefits plans to address the unique needs of their community, identify gaps in healthcare services, and develop a strategy to address these issues as determined from the assessment. Currently, 212 hospitals are required to comply with these statutory requirements. Prior to AB 204, statutes prohibited the Department from authorizing or requiring specific formats for community needs assessments, community benefits plans, or reports. There are no standardized calculations of the economic value, or standardized reporting of community benefit activities. This resulted in challenges when attempting to compare a hospital's community benefit spending across various activities and benchmark it against other hospitals with different attributes.

AB 204 requires private nonprofit acute care hospitals to follow a specific methodology in valuing the benefits they provide to their communities, and for the amount to be consistent with charity care cost as reported to the Department. AB 204 removed the prohibition to require specific formats for community benefits plan and reports. This regulatory action seeks to standardize the community benefits expense reporting, aims to define the method and format for submitting reports, outline the procedures for imposing fines on hospitals for non-compliance, provide directions for hospitals to appeal fines, and address requests for extension to file a report.

AB 204 also requires that the Department produce an annual report which includes a list of hospitals that failed to comply with community benefits reporting requirements. It also requires the Department to publish a report which includes the amount of community benefits spent by each hospital, community benefits attributable to charity care, the unpaid cost of government-sponsored health care programs, and community benefit programs and activities.

The Department is proposing to adopt regulations to implement Health and Safety Code (HSC) sections 127340-127360.

II. THE PROBLEM TO BE ADDRESSED

AB 204 removed the prohibition for the Department to develop regulations to require a specific format for the collection of Hospital Community Benefits Plans. The Department does not have standardized reporting requirements and report data elements. The current report submission methods and related administrative processes have become outdated and inefficient for health facilities and the Department. Furthermore, the absence of standardized report data elements creates challenges when comparing community benefit expenses across diverse health facilities, varying health facility characteristics, and geographic factors.

New regulations are required to update report submission method and standardize reporting requirements, as stated in HSC sections 127340-127360, which imposes reporting requirements on hospitals' community benefits plans. Additionally, regulations will outline administrative procedures authorized by AB 204, which includes reporting extensions and imposition of fines.

III.THE PURPOSE AND BENEFITS OF THIS REGULATORY ACTION

The purpose of the proposed regulations is to implement, interpret, and make specific the reporting requirements of community benefit plans from hospitals as stated in statutes. The benefits of the regulations are to achieve the goals of AB 204, as related to Chapter 2, Article 2. Hospitals: Community Benefits (Health and Safety Code sections 127340-127360), by modifying existing reporting requirements of community benefits plans from hospitals for the purposes of standardization and transparency. HSC section 127340 includes the following statements: "Private not-for-profit hospitals meet certain needs of their communities through the provision of essential health care and other services. Public recognition of their unique status has led to favorable tax treatment by the government. In exchange, nonprofit hospitals assume a social obligation to provide community benefits in the public interest."

One impact of the proposed regulations is to standardize reporting requirements which includes the method of submission. Specifying the submission method in proposed regulations would greatly improve the efficiency and report tracking for health facilities

and the Department. Additionally, it would allow for the Department to easily and timely disseminate hospital community benefits plans to the public on the Department's website, as required by statutes.

Another impact of the proposed regulations is to require health facilities to complete a community benefits expense table. This would allow for greater comparability across diverse health facilities which includes, varying health facility characteristics, geographic factors, and other considerations. The proposed regulations would additionally establish a framework for health facilities to request extensions for report due dates. They would also outline potential fines for health facilities that fail to comply with reporting requirements, emphasizing the significance of reporting compliance.

IV. NECESSITY

The addition of Chapter 8.2 of Division 7 of Title 22, sections 95100-95115, is necessary to implement Chapter 2, Article 2. Hospitals: Community Benefits (Health and Safety Code sections 127340-127360). The regulations are necessary to interpret and provide specificity regarding the various components of the legislation to implement standardized reporting requirements of the mandated program.

V. THE SPECIFIC PURPOSE OF EACH SECTION

Section 95100. Definitions

Section 95100 is added to provide definitions to terms used in Article 1 through 3 of Division 7, Chapter 8.2 of title 22 (proposed regulations). The definitions are necessary to ensure that the program regulations that follow meet the clarity requirement and to provide the specificity necessary for compliance with the regulations and implementation of the reporting requirements mandated by Chapter 2, Article 2. Hospitals: Community Benefits.

Subdivision (a) defines "Broader Community" as a community that is not explicitly designated to serve exclusively to the vulnerable populations as outlined in HSC section 127345 (i). It may also include communities where vulnerable populations cannot be identified. This is necessary to capture the community benefits spending that hospitals undertake that are not identifiably directed at vulnerable populations. HSC section 127355 (c) states that hospitals shall categorize community benefits into separate categories, encompassing broader community.

Subdivision (b)(1) through (b)(10) defines the categories of activities that hospitals will report as the hospital's Net Community Benefit Expenses. These categories are necessary as they define the categories for a hospital to correctly report the Net Community Benefit Expense for each activity. Most of these categories' definitions align with the Internal Revenue Services (IRS) Instructions for Schedule H (Form 990) for

purposes of standardization and comparability. Charity care falls under the definition outlined in HSC section 127345 (a) and is not one of the categories on the IRS Form 990, Schedule H. However, the IRS Form 990, Schedule H does include “Financial Assistance at cost” as a category and the definitions of these terms vary slightly. Other Community Benefits has been added to allow for community benefits expenses of other categories specific to California statute to be captured.

Subdivision (c) defines “Community benefits plan” as a document prepared by a hospital and required to submit pursuant to HSC section 127345. This provision is necessary to clarify the document being referenced in the proposed text.

Subdivision (d) and (e) defines “Department” as the Department of Health Care Access and Information and “Director” as the Director of the Department of Health Care Access and Information. These provisions are necessary to clarify the Director and Department in proposed regulations.

Subdivision (f) defines “Hospitals” to be as stated in HSC section 127345 (g). This provision clarifies health facilities that meet ownership and licensing requirements required to comply with statutes. In addition, this provision serves to clarify the exemptions granted to hospitals regarding their compliance with statutory mandates.

Subdivision (g) defines “Hospital system” as two or more hospitals licensed pursuant to HSC section 127345 (g) that are owned, sponsored, or managed by the same organization. Current statute does not clearly outline the criteria for the Department to consider a hospital’s inclusion as part of system. Proposed regulations are necessary to clearly outline the criteria for defining hospital system.

Subdivision (h) defines “Net Community Benefit Expense” as a hospital’s total expense less direct offsetting revenue for the purpose of administering community benefit programs and activities. This definition aligns with the IRS Instructions for Schedule H (Form 990) and is the value to be reported by hospitals on activities listed on the Community Benefits Report table.

Subdivision (i) defines “Private not-for-profit” as the control type of the hospital’s licensee, as determined by California Department of Public Health to be a nonprofit corporation. Current statutes do not sufficiently clarify the applicability of statutory mandates to exempt hospitals. Proposed regulations are necessary to define requirements for hospital exemption for community benefits plan reporting as outlined in sections 95102 and 95103.

Subdivision (j) defines “Vulnerable populations” as populations that are exposed to medical and financial risk as defined in HSC section 127345 (i). AB 204 revised the definition of “vulnerable populations” to include race and ethnic groups experiencing disparate health outcomes and socially disadvantaged groups. This provision is necessary to clarify community groups identified as part of vulnerable populations. HSC

section 127355 (c) states that hospitals shall categorize community benefits into separate categories, encompassing vulnerable populations.

Section 95101 Hospital Contact Information and Registration

Section 95101 is added to specify the requirements from hospitals when registering with the Department.

Subdivision (a) specifies that a hospital must designate a contact person who must register with the Department for the purpose of receiving compliance and informational communications, receiving advanced notice of report due dates, and submitting the required report. This provision is necessary to ensure the Department has a designated individual to contact regarding requested information and responses.

Subdivisions (b)(1) through (b)(6) specify the information required from the hospital's designated primary contact person to register in the Department's online reporting system. This provision is required for the Department to identify the primary contact person and how to contact this person as needed.

Subdivision (c) specifies the requirement that hospitals shall inform the Department within a specified number of days for any changes specified in subdivision (b)(1) through (b)(6). This provision ensures that the Department has access to the most up-to-date contact information of the primary contact person for the purposes of receiving compliance and informational communications. This provision also ensures that hospitals have an active primary contact person registered on the Department's online reporting system. This is necessary to mitigate communication issues leading to non-compliance.

Section 95102 Community Benefits Plan

Section 95102 is added to specify the requirements of hospitals to submit their Community Benefits Plan to the Department.

Subdivision (a)(1) specifies the required file type of the Community Benefits Plan that hospitals are required to submit to the Department. Hospitals will be required to submit their Community Benefits Plan in Portable Document Format (.pdf). This is necessary to ensure accessibility and use of use for the public when viewing Community Benefits Plans in furtherance of the Legislature's stated goals. The program to create documents in Portable Document Format (.pdf) is readily available to hospitals and does not create additional expense for hospitals.

Subdivision (a)(2) specifies that Community Benefits Plans shall be machine-readable. This is necessary for the public and the Department to easily find information within the plans and relates to the accessibility of information.

Section 95103 Community Benefit Report

Section 95103 is added to provide clarification on the data elements and narrative descriptions required to be reported by hospitals in their community benefits plan report. In addition, information regarding how to submit the aggregated data is included.

Subdivisions (a)(1) through (a)(4) specify report information such as hospital name, HCAI ID, and report period.

Subdivision (a)(5) specifies that hospitals must provide the web address where the community benefits plan is published. HSC section 127350 (e) mandates that hospitals post their community benefits plan on their internet website.

Subdivision (a)(6) specifies that hospitals must provide information regarding its Community Health Needs Assessment (CHNA), which includes information such as the year the hospital last conducted its CHNA, the community groups and vulnerable populations the hospital engaged with, whether the CHNA is publicly available and how it is made available to the public, and the web address where the CHNA is published. This is necessary to provide contextual understanding of the hospital's CHNA activities.

Subdivisions (a)(7) through (a)(8) outline the activity categories for which the hospital shall disclose community benefit spending aimed at both the vulnerable populations and broader community. Within these subdivisions, it is specified that the reported value should be the net community benefit expense in whole dollars.

The categories outlined in these subdivisions align with categories on the IRS Form 990, Schedule H. Nonprofit organizations that operate a hospital are required to complete and file this form with the IRS annually. The purpose of this schedule is to provide information on the activities and policies of, and community benefits provided by, its hospitals facilities and other non-hospital health care facilities that it operated during the tax year. By requiring hospitals to disclose on their community benefit expenses for the specified categories outlined in these subdivisions, the Department is attaining its goals related to comparability, standardization, and transparency. These requirements are designed to have a minimal impact on hospitals, as the information is required to be federally disclosed to the IRS.

Subdivision (a)(9) is added to provide the hospital an opportunity to include any additional comments or information it deems relevant.

<u>Section 95104 Due Dates</u>

Subdivision (a) is added to provide clarification on the required community benefits plan report due dates. Pursuant to HSC section 127350, hospitals shall annually submit their community benefits plan to the Department not later than 150 days after a hospital's fiscal year ends.

Subdivision (b) provides clarity that if the Department's online reporting system is unavailable for report submission for one or more periods of four (4) or more continuous hours during the four (4) State working days prior to the due date, the Department may extend the report due date up to seven (7) days for the submission of the community benefits plan report. Technical issues with the online reporting system could affect a hospital's ability to submit its report and meet the compliance requirements.

Section 95105 Extension Request

Section 95105 is added to provide clarification on how a hospital may request an extension for their required report.

Subdivision (a) specifies that a hospital may request an extension of the due date as specified in section 95104 (a). Subdivision (a) also specifies that the Department may grant the hospital a single 60-day extension of the due date to file their community benefits plan report, upon request.

Subdivision (b) specifies that a hospital may file a request with the Department for an extension on or before the due date via the online reporting system. Subdivision (b) also states that the Department will send an email notice of approval or rejection to the designated contact person(s), which may include a new due date. Upon request by the designated contact person(s), the online report submission portal will automatically evaluate the extension request and promptly provide an approval or denial based on its request availability. This is necessary to streamline the process which aims to expedite the review and response to extension requests, ensuring efficiency and convenience for the users.

Subdivision (c) outlines the process for notifying the requestor of the extension request. Upon approval, the Department will send an email confirmation to the requestor, confirming the extension request has been approved and that the due date has been extended 60 days. In cases of a denial, the Department will send an email confirmation, informing the requestor of the denial of the extension request. This is necessary to ensure that the requestor receives confirmation of a decision from their extension request.

Section 95106 Consolidated Licensee Reporting

Section 95106 is added to specify consolidated reporting of community benefits plans by licensee and hospitals. This section also specifies the process for hospitals to request modifications to reporting.

Subdivision (a) specifies that licensees operating and maintaining more than one physical plant on separate premises submit a consolidated community benefits plan and report under the parent hospital. Licensees may request a modification to submit a community benefits plan and report separately for each plant upon request by the designated contact person(s). Subdivision (a) also specifies that if modifications are granted to report each plant separately, each plant shall be responsible for all reporting

requirements. All requests must be submitted in writing and will remain valid unless any further modifications are implemented.

Subdivision (b) specifies that the hospitals shall make separate requests for an extension for each required report. Failure to request for an extension for each required report may be assessed a fine pursuant to section 95108 (a).

Section 95107 Method of Submission

Section 95107 is added to specify the required method to submit reports filed pursuant to sections 95102 through 95103.

Subdivision (a) specifies that reports shall be submitted electronically through the Department's website using a report submission portal. This is necessary to provide a streamlined and clear submission process for reporting hospitals. This section also provides the submission portal web address.

Subdivision (b) specifies that a hospital shall submit the information as required in section 95103 pertaining to the hospital's CHNA and a report table of the hospital's community benefits expenses. As detailed in section 95102, subdivision (b) also specifies that the community benefits plan document must be in Portable Document File (.pdf) format and shall be in machine-readable format in accordance with Government Code section 11546.7. This is necessary to ensure accessibility for the public when viewing Community Benefits Plans in furtherance of the Legislature's stated goals. The program to create documents in Portable Document Format (.pdf) is readily available to hospitals and does not create additional expense for hospitals.

Subdivision (c) specifies the requirements for report certification. Report shall include certification language stating the information and data contained the in the report is true, correct, and complete. This section is necessary to implement the program for collecting Community Benefits Plan Reports and the report complies with the requirements as stated in statutes and regulations.

Section 95108 Fines for Late Filing of Reports

Section 95108 is added to specify that the Department will assess fines when a hospital fails to file a report by the due date.

Subdivision (a) specifies that if a hospital fails to submit a required report by the due date, considering an approved extension of due date, the Department may assess a fine of one hundred ($100) per day for each day that a report is not filled. Such fines are authorized by HSC section 127346 (a).

Subdivision (b) specifies that if a hospital's report is 120 days delinquent, the Department shall, on an annual basis, assess the maximum fine for failure to submit the

required report for the report period. HSC section 127346 establishes a maximum of no more than a five thousand dollar ($5,000) fine for failure to file a required report.

Section 95109 Fine Assessment

Section 95109 is added to clarify how hospitals will be notified when fines have been accrued, and how the fine amount will be calculated.

Subdivision (a) specifies that the Department will inform the hospital of an accrued fine upon submission of a report after the due date. The Department will calculate the fine pursuant to section 95108 (a) and inform the hospital's designated contact person(s) via email of the accrued fine.

Subdivision (b) specifies that the Department will inform the hospital of an accrued fine upon a hospital's request for extension and approval after the due date. The Department will calculate the fine pursuant to section 95108 (a) and inform the hospital's designated contact person(s) via email of the accrued fine.

Subdivision (c) specifies that the Department will calculate the accrued fine pursuant to section 95108. Hospitals may accrue a fine of $100 per day for late submission of report as described in subdivision (a) and by late extension approval as described in subdivision (b); and may not exceed $5,000 pursuant to HSC section 127346.

Section 95110 Filing an Appeal

Section 95110 is added to specify the requirements of a hospital who has received notice of an accrued fine that may appeal the fine assessment by requesting a hearing.

Subdivision (a) is added to specify that a hospital who has received notice of an accrued fine may appeal the fine assessment by requesting a hearing, and that the request must be filed with the Department's hearing officer in writing no later than 30 days from the date on the notice.

Subdivision (b)(1) through (b)(5) specify the information required to be included on the written request. The required information is necessary to identify the hospital filing the appeal and the matters being appealed.

Section 95111 Hearing Officer Contact Information

Section 95111 is added to provide contact information for the Department's Hearing Officer. This is necessary as appeals and other documents must be filed with the Hearing Officer.

Subdivision (a) specifies that hearing requests and other communications shall be sent to the Hearing Officer by either mail to the Department's Legal Office in Sacramento or by email to hearingofficer@hcai.ca.gov.

Section 95112 Prehearing Provisions

Section 95112 is added to specify the prehearing provisions for all parties.

Subdivision (a) specifies that the hospital and the Department will be notified of the hearing date and time at least 30 days in advance. This should provide parties the time necessary to prepare hearing exhibits and to make other request or arrangements for the hearing.

Subdivision (b) specifies that the hospital and the Department shall provide copies of proposed exhibits to the Hearing Officer and to the other party no later than 10 calendar days prior to the hearing. This is necessary to provide time for parties and the Hearing Officer for review.

Subdivisions (c) through (g) clarify that parties may make certain requests prior to the scheduled hearing: a change of hearing date, change of hearing method, to consolidate matters for hearing, for an interpreter, and for a court reporter. These subdivisions also specify that requests shall be submitted to the Hearing Officer at least 10 business days prior to the scheduled hearing, which is necessary to review requests.

Section 95113 Conduct of Hearing

Section 95113 is added to clarify the procedures by which the hearing will be conducted to ensure hearings are fair and consistent.

Subdivisions (a) through (f) specifies who will conduct the hearing, the method of conducting the hearing, the standards for admission of evidence and testimony at hearing, the means of recording the hearing, and that the hearing will be open to the public. These procedures are necessary to provide for a fair hearing consistent with established standards for administrative proceedings.

Section 95114 Settlement

Section 95114 is added to clarify that if a settlement of the appeal is reached between the hospital and the Department before the hearing, the hearing will be canceled. This is necessary because it allows the Department and the hospital to settle an appeal prior to the scheduled hearing.

Section 95115 Decision

Section 95115 is added to define and provide notice of the process for adoption of a hearing decision by the Director of the Department.

Subdivision (a) states that the Department may reduce or waive the fine due to good cause after assessment of evidence and documentation provided by the parties. This is

necessary to allow for other factors that the hospital may present on their behalf to support the waiver or reduction of the accrued fine.

Subdivision (b) states that the hearing officer shall prepare a recommendation of decision for the Director of the Department. The recommended decision shall be presented in writing and include findings of fact and conclusions of law. This is necessary to provide the Director with the required information to make a final determination.

Subdivision (c) states that the Director may either adopt or reject the proposed decision. If the Director does not adopt the proposed decision, the Director shall independently prepare a decision based upon the hearing record and may adopt the hearing officer's factual findings. This is necessary to ensure that the Director makes the final determination regarding the appeal based only on the hearing record and not on any external information that would not have been provided during the hearing to the hearing officer.

Subdivision (d) explains the Director's decision shall be final and in writing. This is necessary to provide the reasoning for the Director's final decision for the parties and potential judicial review.

VI. ECONOMIC IMPACT ANALYSIS

New regulations are required to implement Chapter 8, Article 2. Hospitals: Community Benefits (Health and Safety Code sections 127340-127360). The Department has narrowly tailored the proposed regulations to implement the statutory requirements for the reporting program. The proposed regulations impose only minor additional reporting or other requirements on any businesses, organizations, or individuals.

The proposed regulations specify that hospitals must report their community benefits to the Department in a standardized manner, aligning with the community benefits already reported to the IRS via the IRS Form 990, Schedule H. These requirements are expected to have minimal economic impact since the necessary information is already available and reported to the IRS.

Furthermore, the regulations define the process for submission, extension requests, and the appeals procedure regarding fines related to the hospital's Community Benefit Plan reporting requirements. Additionally, the regulations mandate hospitals to provide information about the activities associated with their community health needs assessment.

It's important to note that these proposed regulations do not introduce extra obligations for hospitals when preparing their Community Benefit Plans or conducting their community health needs assessment activities.

Therefore, the Department concludes that:

(1) This regulatory action will not create jobs within the state;
(2) This regulatory action will not eliminate jobs within the state;
(3) This regulatory action will not create new businesses;
(4) This regulatory action will not eliminate existing businesses;
(5) This regulatory action will not expand businesses currently doing business within the state;
(6) The benefits of the regulations to the health and welfare of California residents are to achieve the goals of AB 204, as related to Chapter 8, Article 2. Hospitals: Community Benefits (Health and Safety Code sections 127340-127360), by implementing the mandated program, where HSC section 127340 includes the following statements: "Private not-for-profit hospitals meet certain needs of their communities through the provision of essential health care and other services. Public recognition of their unique status has led to favorable tax treatment by the government. In exchange, nonprofit hospitals assume a social obligation to provide community benefits in the public interest." The proposed regulations achieve standardization and transparency on reported community benefits from hospitals to the vulnerable population and the broader community. Proposed regulations will allow the public the ability to easily compare information presented in hospitals' community benefits plans. The proposed regulations also aim to provide clarity on the administrative procedures granted to the Department through this bill, encompassing aspects of compliance, penalties, and appeals.
(7) This regulatory action will not impact workers' safety;
(8) This regulatory action will not impact the state's environment;

VII. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Department has determined that the adoption of the proposed regulations would not have a significant adverse economic impact on any business in the State of California because the regulations proposed primarily clarify the requirements of a statutorily mandated program and impose minor additional reporting requirements as related to Chapter 8, Article 2. Hospitals: Community Benefits (Health and Safety Code sections 127340-127360).

VIII. TECHNICAL, THEORETICAL, OR EMPIRICAL STUDY, REPORTS, OR SIMILAR DOCUMENTS RELIED UPON

Instructions for Schedule H (Form 990)
https://www.irs.gov/pub/irs-pdf/i990sh.pdf

IX. CONSIDERATION OF ALTERNATIVES

No reasonable alternatives have been identified by the Department or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, that would be as effective and less burdensome to affected private persons than the proposed action, or that would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.