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NOTICE OF PROPOSED RULEMAKING

CALIFORNIA CODE OF REGULATIONS

TITLE 22, DIVISION 7, CHAPTER 8.2

Sections: 95100-95115

The Department of Health Care Access and Information (Department) proposes adding new Chapter 8.2 Hospital Community Benefits Plan Reports (Sections 95100-95115) to Division 7 of Title 22 of the California Code of Regulations. Chapter 8.2 will implement Chapter 2, Article 2 Hospitals: Community Benefits (Health and Safety Code section 127340 et seq.). The Department proposes to adopt the proposed regulations described herein after considering all comments, objections, and recommendations regarding the proposed action.

Assembly Bill (AB) 204 (Chapter 535, Statutes of 2019) made several changes to California law to address hospitals' community benefits plan reporting. Health and Safety Code 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. Hospitals and the environment in which they operate have undergone dramatic changes. The pace of change will accelerate in response to health care reform. In light of this, significant public benefit would be derived if private not-for-profit hospitals reviewed and reaffirmed periodically their commitment to assist in meeting their communities' health care needs by identifying and documenting benefits provided to the communities which they serve. California's private not-for-profit hospitals provide a wide range of benefits to their communities in addition to those reflected in the financial data reported to the state."

The proposed regulations are necessary to achieve standardization, transparency, and 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, fines, and appeals.

I. PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

II. WRITTEN PUBLIC COMMENT PERIOD AND CONTACT PERSON

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. All comments must be received by the Department by 5:00 p.m. on June 4, 2024.

Inquiries and written comments regarding the proposed action should be addressed to the primary contact person named below. Comments delivered by email are suggested. Comments may also be emailed, hand delivered, or mailed.

Alma Lopez, Manager
Office of Information Services
Department of Health Care Access and Information
Tel: (916) 326-3908
Email: communitybenefit@hcai.ca.gov
Mailing address: 2020 West El Camino Avenue, Suite 1100
Sacramento, CA 95833-1880

Inquiries and comments may also be directed to the backup contact person at the same mailing address:

Denard Uy, Section Manager
Office of Information Services
Department of Health Care Access and Information
Tel: (916) 326-3839
Email: communitybenefit@hcai.ca.gov
Mailing address: 2020 West El Camino Avenue, Suite 1100
Sacramento, CA 95833-1880

III. AUTHORITY AND REFERENCE

Health and Safety Code section 127010 authorizes the Department to adopt these proposed regulations. The specific code sections that are being implemented, interpreted, or made specific are Health and Safety Code sections 127340, 127345, 127346, 127350, 127355, and 127360.

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

- a. Summary of Existing Laws and Effect of Proposed Regulations

Health and Safety Code 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. Hospitals and the environment in which they operate have undergone dramatic changes. The pace of change will accelerate in response to health care reform. In light of this, significant public benefit would be derived if private not-for-profit hospitals reviewed and reaffirmed periodically their commitment to assist in meeting their communities’ health care needs by identifying and documenting benefits provided to the communities which they serve. California’s private not-for-profit hospitals provide a wide range of benefits to their communities in addition to those reflected in the financial data reported to the state.”

Existing law requires the Department to administer a community benefits report collection program from private, not-for-profit hospitals. The Department is proposing this regulatory action to implement, interpret and make specific Article 2 (Hospital: Community Benefits, sections 127340-127360) of Chapter 2, Part 2, Division 107 of the Health and Safety Code. The regulations being proposed in this rulemaking action aim to formalize the Department’s requirements regarding various aspects, including submission process, data standardization, information related to the hospital’s Community Health Needs Assessment, request for extension of the due date, and protocols for assessing fines and procedure for filing appeals. Specifically, the new regulations address the following:

- Under Health and Safety Code section 127350, private, not-for-profit hospitals are annually required to adopt and update a community benefits plan; and submit to the Department its community benefits plan, which includes, but is not limited to, the activities that the hospitals have undertaken in order to address community needs within its mission and financial capacity no later than 150 days after the hospital’s fiscal year end. Proposed regulation section 95102 specifies that a hospital’s Community Benefit Plan shall be in Portable Document Format (.pdf) and machine-readable. This is necessary to ensure accessibility for the public when viewing Community Benefits Plans from hospitals. Proposed regulation section 95107 specifies the method of submission by utilizing the Department’s online reporting system to provide a streamlined and clear process for hospitals to submit their community benefits plans. Proposed regulation section 95104 provides clarity on the due date of the hospital’s community benefits plan and grants the Department the authority to extend the due date in cases where unforeseen technical issues arise with the online reporting system.
- Under Health and Safety Code section 127350, hospitals are required to assign and report economic value of community benefits provided. Health and Safety Code section 127355 also states that hospitals shall include community benefits categorized into a framework in its community benefits plan which includes medical care services; other benefits for the vulnerable populations and to the

broader community; health research, education, and training programs; and nonquantifiable benefits. Proposed regulation section 95100 provides the definitions of the community benefit activities in which hospitals will report the corresponding community benefit spending in a table as specified in Section 95103. The categories outlined in these sections align with categories on the Internal Revenue Service (IRS) Form 990, Schedule H. Non-profit organizations that operate a hospital are required to file this form with the IRS annually. By requiring hospitals to disclose the community benefit expenses for the specified categories outlined in these sections, 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 same information is required to be federally disclosed to the IRS.

- Under Health and Safety Code section 127350, hospitals are required to complete a Community Health Needs Assessment (CHNA) at least every three years. Proposed regulation section 95103 shall require hospitals to disclose additional information regarding their CHNA including but not limited to engagement activities and publication. This is necessary to provide insight of the hospital's initiatives related to the CHNA, thereby promoting transparency in its operations.
- Under Health and Safety Code section 127346, the Department may grant a hospital a 60-day extension for submitting the annual community benefits plans. Proposed regulation section 95105 specifies that a hospital may request for an extension of the due date to the Department, as well as the prescribed procedure for making such a request. This section also explains that the Department's online reporting system will automatically assess the extension request and promptly provide an approval or denial based on the availability of the request. This is necessary to streamline the process which aims to expedite the review and response of extension requests ensuring efficiency and convenience for the submitters.
- Under Health and Safety Code section 127350, hospitals under the common control of a single corporation or another entity may submit a single consolidated report, as long as each hospital's community benefit financial data and description of the benefits provided to the communities are presented separately. Proposed regulation section 95106 clarifies that hospitals may request for modification to submit a community benefits plan separately. This section also explains that a licensee with an approved modification to report separately, each hospital shall be subjected to the fines pursuant to proposed regulation section 95108. Lastly, this section states that modifications will remain valid unless revoked or further modifications are approved by the Department.
- Health and Safety Code section 127346 grants the authority to the Department to impose a fine not to exceed five thousand dollars (\$5,000) for failure to adopt, update, or submit a community benefits plan. Proposed regulation section 95108 specifies the particulars under which a hospital may be assessed a fine for failing to comply with requirements. This section specifies that if a hospital fails to submit a community benefits plan by the due date, considering an approved extension of the due date, the Department may assess a fine of one hundred

dollars (\$100) per day for each day that a report is not filed with the Department. Furthermore, this section states that if a hospital's report is 120 days delinquent, the Department shall determine and assess the maximum allowable fine not to exceed five thousand dollars (\$5,000). This is necessary to ensure that fines are assessed within a reasonable timeframe after the due date and do not extend into the following report year. Proposed regulation section 95109 specifies that the Department will calculate the accrued fine pursuant to proposed regulation section 95108; and may not exceed \$5,000. This section also states that the Department will inform the hospital's designated contact person(s) via email of the accrued fine upon submission of a late report or an approval of extension request after the due date. This is necessary to ensure the designated hospital contact(s) is duly notified of the accrued fine. Proposed regulation sections 95110 through 95115 outlines the provisions by which a hospital that receives a notice of accrued fine retains the option to appeal the fine. Section 95110 provides guidance on how a hospital may file an appeal, the time limits on filing an appeal, the information required in a notice of appeal, and where to serve the notice. Section 95111 specifies the contact information of the Department's Hearing Officer. Section 95112 implements additional prehearing rules including how the parties will be notified of appealing hearing date, process timeline to submit exhibits, and how to request for change for hearing date or the manner of how the hearing will be held. This section also clarifies how to request consolidation, how to request for an interpreter, and arrange for a court reporter. Section 95113 implements the hearing procedures, including who will conduct the hearing, the method and location of the hearing, rules for the admission of evidence, the testimony at the hearing shall be taken under oath or affirmation, that the hearing may be recorded and open to the public. Section 95114 implements the ability for parties to reach a settlement and who communicates the settlement to the Hearing Officer. Section 95115 makes specific the Director's final review process and steps the Director will take to finalize the decision.

b. Objectives and Anticipated Benefits of Proposed Regulations

The proposed regulations are necessary to achieve standardization, transparency, and the ability to easily compare information presented in hospitals' community benefits plans. Nonprofit organizations that operate a hospital are required to complete and file IRS Form 990, Schedule H with the IRS. The purpose of this schedule is to gather details about a tax-exempt hospital's activities, policies, and community benefit programs. The categories outlined in the proposed regulations align with the categories on the IRS Form 990, Schedule H. This alignment simplifies hospitals' disclosure of required information, as it reflects the information already provided to the IRS. Furthermore, mandating hospitals to report with these predefined categories enhances comparability with other hospitals or hospital attributes.

The proposed regulations also aim to provide clarity on the administrative procedures of the Department, encompassing aspects of compliance, fines, and appeals. By clarifying

the submission and document requirements, extension request process, and designation of hospital contact person(s), hospitals are more informed and will comply with the requirements pursuant to Chapter 2, Article 2. Hospitals: Community Benefits (Health and Safety Code section 127340 et seq.). Lastly, the regulation outlines the circumstances under which hospitals may face fines for non-compliance. Regulations provide clarity on the fine rate applicable for late submissions or extension requests, enhancing transparency in the fine assessment process for hospitals. Regulations also establishes a procedure for hospitals to appeal the fines assessed due to non-compliance. This ensures that the conducted appeals hearings maintain fairness and consistency.

c. Determination of Inconsistency/Incompatibility with Existing State Regulations

As required by Government Code section 11346.5 (a)(3)(D), The Department evaluated the language contained in the proposed regulations. The Department has determined that these proposed regulations are not inconsistent with or incompatible with existing state regulations. These regulations are necessary to implement a new statutorily mandated program.

d. Documents Incorporated by Reference

There are no documents incorporated by reference.

V. DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

- a. Mandate on local agencies and school districts: None.
- b. Cost or savings to any state agency: The Department has identified costs for fiscal year 2023-24. These costs were included in the approved fiscal year 2020-21 Budget Change Proposal (BCP) for AB 204 to implement the requirements of this bill.
- c. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500-17630: None.
- d. Other nondiscretionary cost or savings imposed on local agencies: None.
- e. Cost or savings in federal funding to the state: None.
- f. Cost impact on a representative person or business: New regulations are required to implement Chapter 8, Article 2. Hospitals: Community Benefits (Health and Safety Code section 127340-127360), hospitals may incur up to \$80 per year to upload the statutorily required documents and provide required

information to the online reporting system prescribed by these proposed regulations.

- g. Statewide adverse economic impact directly affecting businesses and individuals: The Department has made an initial determination that the regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- h. Significant effect on housing costs: None.
- i. Cost impact on small businesses: This proposed action does not affect small business because no entities regulated under the proposed action are small businesses.

VI. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS (EIA)

New regulations are required to implement Chapter 8, Article 2. Hospitals: Community Benefits (Health and Safety Code section 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.

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 section 127340-127360), by modifying existing reporting requirements of community benefits plans from hospitals, where Health and Safety Code 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, fines, and appeals.

- (7) This regulatory action will not impact workers' safety;
- (8) This regulatory action will not impact the state's environment;

VII. STATEMENT OF NECESSITY FOR REPORTING REQUIREMENT

It is necessary for the health, safety, or welfare of the people of this state that this regulation which requires a report apply to businesses.

VIII. REASONABLE ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

IX. AVAILABILITY OF EXPRESS TERMS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH PROPOSED RULEMAKING IS BASED

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address given for the contact persons. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations, information upon which proposed rulemaking is based, the initial statement of reasons, and an economic impact analysis (contained in the initial statement of reasons).

The text is available on the Department's website at <https://hcai.ca.gov/about/laws-regulations/>.

X. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL

After considering all timely and relevant comments received, The Department may adopt the proposed regulations substantially as described in this notice. If the

Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised.

Please send requests for copies of the modified text to the listed contact person. The modified text will also be available on the website at <https://hcai.ca.gov/about/laws-regulations/>. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

XI. AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons, including all of the comments and responses, will be available, after its completion, through the Department's website at <https://hcai.ca.gov/about/laws-regulations/>. The Final Statement of Reasons will also be available for review from the designated contact person.

XII. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed regulations can be accessed through the Department's website at <https://hcai.ca.gov/about/laws-regulations/>.