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## FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS  
TITLE 22, DIVISION 7, CHAPTER 10  
ARTICLE 3.5: SKILLED NURSING FACILITY CONSOLIDATED REPORTING  
REQUIREMENTS  
SECTIONS 97046 – 97046.6

### I. UPDATE TO INITIAL STATEMENT OF REASONS

In response to public comments received during the public comment period, the Department of Health Care Access and Information (HCAI) has made the following substantive changes to the proposed regulations text:

- In Section 97046, the text of the proposed regulations as originally noticed did not include definitions for “Combined Financial Statement,” “GAAP,” “GAAS,” “Related Party,” or “SSARS.”

After evaluating initial public comments (see comments No. 8, 11, and 21 below), HCAI modified the text of the proposed regulations to include those definitions.

- In Section 97046.1(b), the text of the proposed regulations as originally noticed did not include direction to the definition of “annual consolidated financial report” in Section 97046.

HCAI deemed it necessary to add this direction for specificity and clarification.

- In Section 97046.1(b), the text of the proposed regulations as originally noticed did not include the standards by which to review or audit the components of the annual consolidated financial report.

After evaluating initial public comments (see comments No. 11, 13, and 14 below), HCAI modified the text of the proposed regulations to specify that items (1) through (5) in Subsection (c) are to be reviewed or audited in accordance with GAAS and SSARS; and items (6) and (7) are to be reviewed for compliance with the *Accounting and Reporting Manual for Long-Term Care Facilities* incorporated by reference in Section 97019.

- In Section 97046.1, the text of the proposed regulations as originally noticed did not include a requirement for the reporting organization to provide an explanation should any component in subsections (c), (d), or (e) not be included in the submission.

HCAI deemed it necessary to specify the requirement of explanations for missing components and added subsection (f) to address this requirement.

- In Section 97046.2(b), the text of the proposed regulations as originally noticed did not specify that documents should be text-based.

After evaluating initial public comments (see comment No. 35 below), HCAI modified the text of the proposed regulations to specify that the machine-readable documents must also be text-based.

## **II. LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose a mandate on local agencies or school districts.

## **III. SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD**

The following organizations submitted written comments on the proposed regulations during the public comment period from July 21, 2023, to September 5, 2023:

AARP California  
SEIU Local 2015 – California’s Long-Term Caregivers  
California Advocates for Nursing Home Reform (CANHR)  
Geriatric Circle – Long Term Care Experts  
Flagstone Healthcare  
California Association of Health Facilities (CAHF)  
LeadingAge California  
Providence Administrative Consulting Services (PACS)  
California Long-Term Care Ombudsman Association (CLTCOA)  
California Society of CPAs (CalCPA)  
California Association of Long-Term Care Medicine (CALTCM)

The comments received are summarized below under the regulatory section they address.

### **22 CCR §97046 – Definitions**

1. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding a definition for “Depreciation” as a non-cash allowable expense, used to allocate the cost of tangible or physical assets over their useful life.

RESPONSE: No action taken. HCAI finds it unnecessary to define this term in regulations. Organizational structures and financial accounts vary greatly; therefore, this term cannot be broadly applied in these regulations.

2. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding a definition for “Disallowed Expenses” as those expenses that include specific costs or charges that are not permitted under Medicare and Medi-Cal reimbursement guidelines. Allowable costs may not exceed the fair market price for comparable goods and services.

RESPONSE: No action taken. HCAI finds it unnecessary to define this term in regulations. Organizational structures and financial accounts vary greatly; therefore, this term cannot be broadly applied in these regulations.

3. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding a definition for “Parent Company,” “Parent Corporation,” or “Parent Organization” to mean an organization that is the legal entity owning a controlling interest in a skilled nursing facility subject to the disclosure requirements in this section. The parent organization is the “ultimate” parent, or the top entity in a hierarchy (which may include other parent organizations) of subsidiary organizations that is not itself a subsidiary of any corporation. A legal entity may be its own parent organization if it is not a subsidiary of any other organization.

RESPONSE: No action taken. HCAI finds it unnecessary to define this term in regulations. Organizational structures and financial accounts vary greatly; therefore, this term cannot be broadly applied in these regulations.

4. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding a definition for “Private Equity Company” to mean, for the purposes of this section, a company that collects capital investments from individuals or entities and purchases an ownership share of a provider, the real estate or buildings in which a provider operates, a company with an ownership or control interest in the provider, or an additional disclosable party subject to disclosure by the provider.

RESPONSE: No action taken. HCAI finds it unnecessary to define this term in regulations. Organizational structures and financial accounts vary greatly; therefore, this term cannot be broadly applied in these regulations.

5. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding a definition for “Properties” to include information about the company’s significant physical properties, such as principal buildings and real estate, and other materially important physical properties, regardless of whether the property is in a separate company or real estate investment trust.

RESPONSE: No action taken. HCAI finds it unnecessary to define this term in regulations. Organizational structures and financial accounts vary greatly; therefore, this term cannot be broadly applied in these regulations.

6. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding a definition for “Real Estate Investment Trust” to mean an entity that meets the definition of 26 U.S.C. Section 856 or claims REIT status when filing taxes with the IRS. Real estate investment trusts are additional disclosable parties as defined in this section and subject to the organizational structure disclosures in 42 C.F.R. Section 424.516(iv).

RESPONSE: No action taken. HCAI finds it unnecessary to define this term in regulations. Organizational structures and financial accounts vary greatly; therefore, this term cannot be broadly applied in these regulations.

7. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding a definition for “Reporting Companies and Entities” to include the parent company and all its subsidiaries including its holding companies, real estate or property, management, service companies, and other entities that are related parties.

RESPONSE: No action taken. HCAI finds it unnecessary to define this term in regulations. Organizational structures and financial accounts vary greatly; therefore, this term cannot be broadly applied in these regulations.

8. COMMENT: [CANHR, CalCPA, CLTCOA] Three commenters recommend adding the legislative definition of related party to regulatory definitions.

RESPONSE: HCAI agrees with this comment and has updated the text of the regulation in order to clarify the intent of the regulation.

## 22 CCR §97046.1 - REQUIRED REPORTS

9. COMMENT: [CalCPA] One commenter recommends adding instructions or guidance outlining the requirements for the various reporting scenarios.

RESPONSE: No action taken. The requirements for reporting are described in both the legislation and the regulation. Determinations as to which organizations are subject to consolidation in accordance with the Consolidation Topic of the Financial Accounting Standards Board’s Accounting Standards Codification must be made by the organization or its consultants.

10. COMMENT: [CalCPA] One commenter recommends adding the legislative language stating that the annual consolidated financial report shall be on the accrual basis of accounting in accordance with GAAP.

RESPONSE: No action taken. This requirement is already stated in statute and does not require restatement in regulation.

11. COMMENT: [CalCPA] One commenter recommends adding language stating the consolidated financial report shall be reviewed by a CPA in accordance with Statements on Standards for Accounting and Review Services (SSARS) and audited in accordance with Generally Accepted Auditing Standards (GAAS).

RESPONSE: HCAI agrees with this comment and has updated the text of the regulation in order to clarify the intent of the regulation.

12. COMMENT: [CAHF] One commenter recommends including a pathway when consolidation is not permissible based on FASB, GAAP, or GAAS to allow for the submission of similar unaudited/unreviewed information to remain in compliance with the statute.

RESPONSE: No action taken. When consolidation is not permissible, no consolidated financial report is required. Filing unaudited/unreviewed equivalents is not a requirement. However, the related parties' individual financial statements and visual representations of the organization's structure may still be applicable.

13. COMMENT: [CAHF, CalCPA] Two commenters recommend including an allowance to provide unaudited/unreviewed schedules when unable to audit/review in accordance with auditing standards.

RESPONSE: HCAI agrees with this comment and has updated the text of the regulation to dictate the standards for audit/review of the report components. Neither statute nor regulations require an audit/review of the individual financial statements or the visual representations of the organizational structure.

14. COMMENT: [CAHF, CalCPA, PACS, Flagstone] Four commenters recommend including an allowance to provide unaudited/unreviewed information for the Statement of Patient Census, the Statement of Patient Revenue, and the visual representations of the organizational structure without violating SB 650 when audit/review is in violation of professional standards.

RESPONSE: HCAI agrees with this comment and has updated the text of the regulation to dictate the standard for review of the Statement of Patient Census and Statement of Patient Revenue. Neither statute nor regulations require an

audit/review of the individual financial statements or the visual representations of the organizational structure.

15. COMMENT: [CalCPA] One commenter recommends consideration be granted of the costs and time that will be necessary to comply.

RESPONSE: No action taken. This comment is directed at the Health and Safety Code provisions and is not specifically directed at HCAI's proposed action or to the procedures followed by HCAI in proposing or adopting this action.

16. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend in subsection (a) to change "An organization" to "The reporting companies and entities include the parent company/organization and all its subsidiaries and holding companies" and adding to the end of the paragraph "This includes all companies or entities with financial or operational control over a nursing facility or facilities."

RESPONSE: No action taken. The statute does not require or authorize HCAI to make this change.

17. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding several additional disclosure requirements of the "parent company or organization" including (1) a description of the company's business, (2) information about the company's physical properties, (3) separate disclosure of all private equity investors and real estate investment trusts with 5 percent or greater investment, (4) the names of owners, board members and officers of each entity, (5) the company's compensation policies and programs and report amount and purpose of compensation paid to board members and officers, including any shared covered by compensation plan, (6) information about relationships and transactions between the company and its directors, officers, and their family members, including information if each director is independent, (7) disclosure of fees paid to their accounting firm for various types of services, (8) a list of financial statements and exhibits, including bylaws, material contracts, list of subsidiaries, and list of each nursing home owned and operated, and (9) a list of names and addresses of all individual SNFs owned and operated in California and other states.

RESPONSE: No action taken. The statute directs an organization as to what components must be included in the CFR and allows for other disclosures should the organization choose to include them. Because the direction is for the organization, HCAI is not authorized nor required to add additional disclosure requirements.

18. COMMENT: [AARP, Geriatric Circle, CANHR, CALTCM, CLTCOA] Five commenters recommend reports be signed by CPA.

RESPONSE: No action taken. CPAs do not sign but express an opinion. CPA opinion is separate from, but included with, the financial statements.

19. COMMENT: [AARP, Geriatric Circle, CANHR, PACS, Flagstone, CALTCM, CLTCOA] Seven commenters recommend all financial statements be presented according to GAAP, and more specifically, according to Accounting Standards for Codification for "Consolidation" (ASC 810) and "Related Party Disclosures" (ASC 850).

RESPONSE: No action taken. The CPA review or audit will reveal if statements are not in compliance with GAAP.

20. COMMENT: [PACS, Flagstone] Two commenters recommend utilizing current cost report forms, instructions, and disclosures if additional or supplemental information of related party transactions is required.

RESPONSE: No action taken. This comment is directed at the Health and Safety Code provisions and is not specifically directed at HCAI's proposed action or to the procedures followed by HCAI in proposing or adopting this action. This statute does not request additional or supplemental information regarding related party transactions.

21. COMMENT: [PACS, Flagstone] Two commenters recommend requiring combined financial statements even if no consolidated report is filed; and if a consolidated or combined financial statement report is filed, no "additional financial statement entity level reports will be required."

RESPONSE: HCAI has added a definition for "combined financial statement." However, this comment is directed at the Health and Safety Code provisions and is not specifically directed at HCAI's proposed action or to the procedures followed by HCAI in proposing or adopting this action.

22. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding language to the opening paragraph for Subsection (c) to list the financial statements already listed in subsections (1) through (4) and adding a requirement for notes that explain the information presented in the financial statements.

RESPONSE: No action taken. HCAI finds the added language does not provide clarification to the legislation or the regulation.

23. Comment: [Geriatric Circle, CALTCM] Two commenters recommend adding language to Subsection (c)(1) so that the balance sheet includes “cash on hand” and “owners equity” net worth.

RESPONSE: No action taken. HCAI finds the added language does not provide clarification to the legislation or the regulation.

24. COMMENT: [AARP, Geriatric Circle, CANHR, CALTCM, CLTCOA] Five commenters recommend adding a schedule of amounts due to and from each operating entity and all related parties, expressing concerns about inaccurate statements and concealment of transactions.

RESPONSE: No action taken. The requested schedule is not a requirement of the legislation. Intra-entity balances and transactions are eliminated in the preparation of consolidated financial statements in accordance with the Consolidation Topic of the Financial Accounting Standards Board Accounting Standards Codification, paragraph 810-10-45-1.

25. COMMENT: [AARP, Geriatric Circle, CANHR, CALTCM, CLTCOA] Five commenters recommend Subsection (c)(3) require disallowed expenses be reported, i.e., those expenses deemed too high by a government agency and therefore ineligible for reimbursement.

RESPONSE: No action taken. HCAI finds the added language does not provide clarification to the legislation or the regulation. No such requirements exist for GAAP or FASB.

26. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding language to Subsection (c)(6) to add “and days of care by each payer.”

RESPONSE: No action taken. HCAI finds the added language does not provide clarification to the legislation or the regulation. The Statement of Patient Census is defined in Section 97046.

27. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend adding language to Subsection (c)(7) to add “...from nursing home operations and from all other separate sources and operations.

RESPONSE: No action taken. HCAI finds the added language does not provide clarification to the legislation or the regulation. The Statement of Patient Revenue is defined in Section 97046.



28. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend requiring a statement of net income and net income margin; earnings before interest, taxes, depreciation, amortization, and restructuring or rent costs; and earnings before interest, taxes, depreciation, and amortization for the fiscal year.

RESPONSE: No action taken. The statute directs an organization as to what components must be included in the CFR and allows for other disclosures should the organization choose to include them. Because the direction is for the organization, HCAI is not authorized nor required to add additional disclosure requirements.

29. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend changing “organization” to “organization/entity” in Subsection (e)(1).

RESPONSE: No action taken. HCAI finds the added language does not provide clarification to the legislation or the regulation.

30. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend changing the amount of transactions with unrelated parties from \$200,000 to \$50,000 in Subsection (e)(2).

RESPONSE: No action taken. This comment is directed at the statute, rather than the proposed regulation.

31. COMMENT: [LeadingAge CA] One commenter seeks clarification of Subsection (d) on the requirement of individual financial statements as it relates to board members.

RESPONSE: No action taken. Both the legislation and the regulation specify the requirements of the individual financial statements. There are no alternative requirements for board members.

32. COMMENT: [SEIU] One commenter questioned if a plan is in place to address discrepancies, especially in relation to related party transactions.

RESPONSE: No action taken. The legislation does not require or authorize HCAI to review consolidated financial reports for accuracy, only for completeness and compliance.

33. COMMENT: [SEIU] One commenter questioned if nursing homes are required to explain discrepancies in related party transactions and submit proof of explanations.

RESPONSE: No action taken. The legislation does not require or authorize HCAI to review consolidated financial reports for accuracy, only for completeness and compliance.

#### 22 CCR §97046.2 - METHOD OF SUBMISSION

34. COMMENT: [AARP, Geriatric Circle, CANHR, CALTCM, CLTCOA] Five commenters recommend the use of a standardized report form for the annual consolidated financial report.

RESPONSE: No action taken. The statute does not require HCAI to prescribe a standardized form for the consolidated financial report. Organizational structures vary greatly; therefore, their financial statements will also vary. Standardization of accounts and forms is not feasible.

35. COMMENT: [AARP, Geriatric Circle, CANHR, CALTCM, CLTCOA] Five commenters recommend reports be submitted in an open text format instead of PDF.

RESPONSE: HCAI has updated the text of the regulations to specify that the machine-readable format must also be text-based but will maintain the documents be PDF files. The regulations specify that the documents submitted must be in a machine-readable format and cannot be scanned versions or images of paper products. If a data output format is structured so that the data it conveys is machine-readable, then that output format is a machine-readable format, regardless of the file extension.

#### 22 CCR §97046.3 - FORM OF AUTHENTICATION

36. COMMENT: [AARP, Geriatric Circle, CANHR, CALTCM, CLTCOA] Five commenters recommend a requirement that the report certification be signed by the chief executive officer or chief financial officer of the parent company submitting the report.

RESPONSE: No action taken. Not all SNFs have a parent company but may still be required to submit other documents. Therefore, limiting who can sign the certification or be the duly authorized official would preclude some SNFs from complying with the regulations.

37. COMMENT: [Geriatric Circle, CALTCM] Two commenters recommend requiring the chief executive officer or chief financial officer of the parent company to submit the report.

RESPONSE: No action taken. Not all SNFs have a parent company but may still be required to submit other documents. Therefore, limiting who can sign the certification or be the duly authorized official would preclude some SNFs from complying with the regulations.

## 22 CCR §97046.5 – EXTENSION

38. COMMENT: [SEIU] One commenter questioned what situations warrant or do not warrant a 90-day extension.

RESPONSE: No action taken. HCAI is unable to determine every reason for unintended or unforeseen delays and, therefore; reserves the granting of extensions on a case-by-case basis.

39. COMMENT: [SEIU] One commenter questioned if a nursing home is still subject to penalties if an extension request is made on or immediately before the due date and the request is denied.

RESPONSE: No action taken. The statute is included in the Health Data and Advisory Council Consolidation Act (HSC § 128675) and, therefore; bound by HSC § 128770 that specifies any health facility that does not file with HCAI any report required by the chapter is liable for a civil penalty of \$100 a day for each day the filing of any report is delayed.

## 22 CCR §97046.6 - FAILURE TO FILE REQUIRED REPORTS

40. COMMENT: [AARP, Geriatric Circle, CANHR, CALTCM, CLTCOA] Five commenters recommend increasing the daily penalty from \$100 to \$500 and that the penalty continue to be assessed until the report is submitted.

RESPONSE: No action taken. HSC 128734.1 is included in Health & Safety Code, Division 107, Part 5, Chapter 1 known as the Health Data and Advisory Council Consolidation Act (Data Act). Section 128770 of the Data Act specifies the penalty for failure to file any report required in the Chapter.

41. COMMENT: [SEIU] One commenter questioned (1) if a plan is in place to address a nursing home accepting yearly fines rather than filing reports, (2) if HCAI can create regulations to prevent non-submission, and (3) if HCAI can establish harsher penalties for repeat offenders who fail to file.

RESPONSE: No action taken. Section 128734.1 is included in Health & Safety Code, Division 107, Part 5, Chapter 1 known as the Health Data and Advisory Council Consolidation Act (Data Act). Section 128770 of the Data Act specifies

the penalty for failure to file any report required in the Chapter. In addition, penalties cannot be assessed until a report is submitted. Therefore, if penalties continue to accrue until submission, HCAI may never receive the report and the facility will never be penalized. Assessing a penalty after 365 days allows HCAI to take action, albeit low in monetary value.

### Miscellaneous Comments

HCAI has received two comments that are not directly related to a particular proposed regulatory section or that are general in nature.

42. COMMENT: [AARP] One commenter recommends that HCAI have a designated staff unit dedicated to analyzing the financial documents of applicants for licensure and for the annual submissions that are the subject of these regulations. This unit should be sufficiently staffed with individuals who have forensic and other accounting experience. Additionally, appropriate licensure citations should be issued, and other legal actions should be taken against facilities that fail to appropriately use state and federal funds on resident care.

RESPONSE: No action taken. No part of this recommendation is a requirement of the legislation, and some parts of the request are not a responsibility of HCAI.

43. COMMENT: [SEIU] One commenter questioned if there are penalties for nursing homes caught lying on their financial reports or if safeguards are in place to prevent that from happening.

RESPONSE: No action taken. The statute does not require or authorize HCAI to review consolidated financial reports for accuracy, only for completeness and compliance.

## **IV. SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD**

After reviewing comments received during the initial comment period, HCAI made modifications to the text of the proposed regulations and conducted a 15-day comment period. The modified text was made available to the public for comment from October 19, 2023, to November 3, 2023.

The following organizations submitted written comments on the modified text of the proposed regulations during the 15-day public comment period:

California Association of Health Facilities (CAHF)  
Flagstone Healthcare

The comments received are summarized below under the regulatory section they address.

## 22 CCR §97046.1 - REQUIRED REPORTS

1. COMMENT: CAHF commented regarding Subsection (b) that HCAI should recognize only those materials for audit or review in which certified public accountants can render opinions. Those materials that are supplementary should be indicated only to be presented in the manner established in national accounting standards.

RESPONSE: No action taken. The statute dictates that the annual consolidated financial report includes the listed statements and that the report, in its entirety, be reviewed or audited by a CPA. The only items that do not require CPA audit or review are the individual financial statements and the visual representations of the organizational structure since they are listed as "in addition to" the annual consolidated financial report.

2. COMMENT: CAHF commented that Section 97046.1(b)(2) must be deleted or at least remove any reference to the Manual and Subsection (c)(6) must also eliminate the phrase "by payer." Section 97046.1(b)(2) requirement exceeds the authority contained in HSC 128734.1 as there is no requirement for a statement of patient census "by payer" or a requirement for compliance with the Manual.

RESPONSE: No action taken. HSC 128734.1 requires financial statements equivalent to those already established in HSC 128735, demonstrating statutory intent to present the same information. Both Sections are included in Health & Safety Code, Division 107, Part 5, Chapter 1 known as the Health Data and Advisory Council Consolidation Act (Data Act). Section 128810 of the Data Act authorizes HCAI to make all regulations necessary to implement the provisions of the Data Act. The Accounting and Reporting Manual for California Long-Term Care Facilities (the Manual) was incorporated by reference in Section 97019 of the California Code of Regulations to assure uniformity of accounting and reporting procedures. The Manual established the report form "Facility Patient Days by Payer" as the uniform reporting of patient census.

3. COMMENT: CAHF commented regarding Subsection (b)(2) that CPAs will be unable to express an opinion as to compliance with the Manual for these and other topics as they are not governed by the requisite national accounting standards.

RESPONSE: No action taken. The level of review required for the Statement of Patient Census and the Statement of Patient Revenue is a review that ensures compliance with the instructions for completing these forms as prescribed in the Manual. Because the Manual is incorporated by reference in the CCR, this review is considered a regulatory review.

4. COMMENT: Flagstone commented regarding Subsection (b)(2) that to the extent the CPA report is done in accordance with GAAP and does not incorporate schedules as required by SB 650, the organization will produce non-audited/non-reviewed schedule(s) submitted at the same time as the annual consolidated report. The schedules of a Statement of Patient Census by payer and a Statement of Patient Revenue by payer and by routine and ancillary revenue center would NOT be a part of required auditing or review standard and therefore would not be included in the annual consolidated financial report but instead, be provided as supplemental schedules.

RESPONSE: No action taken. The statute dictates that the annual consolidated financial report includes the listed statements and that the report, in its entirety, be reviewed or audited by a CPA. HCAI understands that the Statement of Patient Census and the Statement of Patient Revenue are not governed by industry accounting standards and, therefore, require a regulatory review to ensure compliance with the Manual, as incorporated by reference in CCR Section 97019.

5. COMMENT: CAHF has commented regarding Subsection (c)(5) that a combined financial statement is typically excluded from audit opinion and included as unaudited or unreviewed supplementary information in an opinion letter. In addition, the accounting rules associated with combined financial statements are exactly the same as rules that allow for consolidated financial statements. HCAI has failed to address these issues in the proposed regulations.

RESPONSE: No action taken. HCAI disagrees with this comment. The statute dictates that the annual consolidated financial report includes the listed statements and that the report, in its entirety, be reviewed or audited by a CPA. The combined financial statement is one component of the annual consolidated financial report. HCAI has not found any documentation to support that a combined financial statement cannot be audited or reviewed by a CPA. Organizations are only required to prepare a consolidated financial statement if they meet the requirements for consolidation in accordance with the Consolidation Topic of the Financial Accounting Standards Board Accounting Standards Codification. If the FASB requirements for consolidation are not met, no consolidated or combined financial statements are required.

6. COMMENT: Flagstone has commented that Section 97046.1(c)(5) should be revised to create clarity as the current language confuses terms of art within the accounting industry. The current language is inconsistent with accounting terminology and creates a lack of clarity. Recommend not requiring a combined financial statement if a consolidated financial statement can be prepared, and requiring a combined financial statement if a consolidated financial statement cannot be prepared.

RESPONSE: No action taken. HCAI disagrees with this comment. HCAI understands that there are varying definitions and presentations for the term "combined financial statement" in the accounting industry. Therefore, HCAI has defined "combined financial statement" in proposed Section 97046 to clarify statutory intent. Removing one of the listed financial statements is in direct violation of the statute.

7. COMMENT: Flagstone has commented that the cost estimates presented and used by the California legislature in analyzing SB 650 are inconsistent with the cost to providers in order to comply with the law. Recommend that to the extent the cost to comply with the proposed regulations are unduly burdensome, unwarranted, and preclude operations to comply with required reports, providers should not be required to submit such reports. Subsection (f) should be revised to include financial and operational burden or hardship as an explanation for non-submission and exemption from penalty.

RESPONSE: No action taken. This comment is directed at the Health and Safety Code provisions and is not specifically directed at HCAI's proposed action or to the procedures followed by HCAI in proposing or adopting this action. The legislation does not allow for a hardship exemption.

### Miscellaneous Comments

HCAI received one comment that is general in nature.

8. COMMENT: CAHF commented that HSC 128734.1 is flawed and contains elements at odds with GAAP and other national accounting standards. HCAI has failed to propose regulations that meet the goals of the statute while working within the confines of accounting standards.

RESPONSE: No action taken. HCAI disagrees with the comment. HCAI has considered all comments during the 45-day comment period and worked with members of CalCPA to develop regulations that align with the requirements of the statute while also accommodating accounting industry standards. The

proposed regulations establish a balance between legal compliance and accounting industry standards to ensure they are both effective and compliant.

## **V. ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES**

HCAI determined that one health facility matches the small business definition stated in Government Code §11342.610. This health facility could potentially be affected by HCAI's proposed regulations if they have interests in businesses that provide services to the facility. No alternatives that would lessen any adverse economic impact on small businesses have been proposed.

## **VI. ALTERNATIVES DETERMINATION**

No reasonable alternatives have been identified by HCAI 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 provisions of law.

## **VII. ADDITIONAL DETERMINATIONS**

Pursuant to Government Code §11346.3(d), HCAI has determined that it is necessary for the health, safety, or welfare of the people of the state that these regulations apply to businesses.

## **VIII. GOOD CAUSE ARGUMENT FOR EARLY EFFECTIVE DATE**

HCAI requests that the Office of Administrative Law (OAL) complete an expedited review of this rulemaking file and, pursuant to Government Code section 11343.4, subdivision (b)(3), that this regulation become effective upon filing with the Secretary of State. This request is based on the following good cause.

Health and Safety Code section 128734.1 is effective for fiscal years ending on or after December 31, 2023. The proposed regulatory text includes information regarding the format of the reports, HCAI's report collection system, and when the reports are due. No reports can be submitted prior to these regulations becoming effective.

To allow skilled nursing facilities adequate time to prepare these reports before the initial April 30 due date, and to ensure that the statutorily required reporting is not delayed, HCAI respectfully requests that this regulation become effective upon filing with the Secretary of State.