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STATEMENT OF EXPLANATION FOR SECTION 100 FILING

TITLE 22, CCR, DIVISION 7, CHAPTER 9.2

Assembly Bill (AB) 2297 (Chaptered 511, Statutes of 2024) was approved by the Governor on September 24, 2024, and will become effective January 1, 2025 (copy attached). Among other things, it added Health and Safety Code (HSC) section 127400.5 and amended HSC section 127405. Definitions for “charity care” and “discount payment” were added, the consideration of monetary assets for any eligibility determinations was eliminated, and the income documentation requirement for both financial assistance programs was amended to be the same.

Pursuant to Title 1, Division 1, Chapter 1, Article 2, Section 100(b)(3), of the California Code of Regulations (CCR), the Department of Health Care Access and Information (HCAI) submits this written statement explaining why the proposed amendments to Sections 96051 and 96051.8 of Articles 1 and 2 of Division 7 of Title 22 of the CCR do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.

Subject to the approval of the Office of Administrative Law, HCAI proposes the amendments to Sections 96051 and 96051.8 of Articles 1 and 2 of Division 7 of Title 22 of the CCR.

Amendment of Section 96051

- Amending the introductory statement before subdivision (a) is necessary to add the cross reference to HSC section 127400.5, which is where terms for “charity care” and “discount payment” are now statutorily defined.
- Repealing subdivisions (b) and (d) is necessary to conform existing regulations to mandated statutory language where the regulation is inconsistent with and superseded by a change in statute, and the agency has no discretion to have a regulation which differs from the proposed amended regulation.
 - “Charity care” and “discount payment” are the two types of financial assistance programs hospitals are required to have under the Hospital Fair Pricing Act, and each program has different statutory requirements. “Charity care” and “discount payment” were previously undefined by statute, so regulatory definitions were created for clarification. The existing definition of “charity care” that appears in HSC section 127345(a) for the

Hospital Community Benefit Program was borrowed and modified for the Hospital Fair Billing Program's regulatory definition.

- AB 2297 added HSC section 127400.5 which states: "For purposes of this chapter, the following terms have the following meanings: (a) 'Charity care' means free care. (2) 'Discounted payment' or 'discount payment' means any charge for care this is reduced but not free." This made clear that although there is another definition of "charity care" in another chapter of the HSC, for purposes of this chapter and for purposes of the Hospital Fair Billing Program and compliance with the Hospital Fair Billing Act, these are the definitions that apply. Of note, HCAI's regulatory definitions existed at the time AB 2297 was proposed, and the fact that legislators added statutory definitions shows HCAI does not have discretion to define the terms differently to be more expansive, and the Hospital Fair Pricing Act does not grant HCAI authority to make exceptions to the statutory requirements. HCAI's definition of "charity care" included free care and reduced cost care, but that is now in conflict with and superseded by the statute limiting "charity care" to only free care, and "discount payment" to anything that is reduced but not free.
- The Hospital Fair Billing Program is patient-focused, so the standard, more generalized statutory definitions make more sense as they define the benefit the patient is receiving from the patient's perspective (i.e., free care or discounted care). The borrowed definition from the Hospital Community Benefit Program addressed how bad debt is defined since that program is focused on hospital cost reporting. That is not a consideration of the Hospital Fair Billing Program, so removing that language from the regulatory definition does not change the requirements for the financial assistance hospital's offer to the patients and does not change how the Hospital Fair Billing Program operates in its capacity as a regulatory agency.
- Due to the deletion of (b) and (d), the subdivisions following were renumbered.

Amendment of Section 96051.8

- Subdivision (a)(1) cannot be repealed outside of the normal rulemaking process, but amending subdivision (a)(1) is necessary to conform existing regulations to mandated statutory language where the regulation is inconsistent with and superseded by a change in statute, and the agency has no discretion to have a regulation which differs from the proposed amended regulation.
 - Under existing law, a hospital may consider income and monetary assets of the patient when determining eligibility for charity care (HSC § 127405(c)), while only income can be considered for discount payment eligibility (HCS § 127405(b)). As such, under HSC section 127405(e)(1), " For purposes of determining eligibility for discounted payment,

documentation of income shall be limited to recent pay stubs or income tax returns,” and under (e)(2), “For purposes of determining eligibility for charity care, documentation of assets may include information on all monetary assets, but shall not include statements on retirement or deferred compensation plans qualified under the Internal Revenue Code, or nonqualified deferred compensation plans.” For hospitals that use a single application for patients to apply for either or both programs, 22 CCR section 96051.8(a)(1) was added to require hospitals to make clear on their application which documents were required if a patient only wanted to apply for discount payment (which requires providing less documentation and has less restrictions). HCAI did not want patients to be deterred from applying for discount payment by applications that required more supporting documentation than legally allowed.

- Under AB 2297, consideration of monetary assets for all eligibility determinations has been eliminated. The existing HSC section 127405(c) and (e)(2), along with all reference to monetary assets related to eligibility determinations will be removed. HSC section 127405(e)(1) is amended to read: “For purposes of determining eligibility for discounted payment or charity care, documentation of income shall be limited to recent pay stubs or income tax returns.” As a result, there is no longer a distinction between the types supporting documentation that can be required, and limiting documentation of income to paystubs and tax returns is no longer exclusive to the discount payment program. To rectify the inconsistency with the statute the regulatory language needs to be amended to be consistent with the statutory language HCAI is statutorily obligated to enforce.
- Of note, this clarification was for patients only, so that patients would know what documents they were required to submit when faced with a single application for both types of financial assistance programs. If hospitals use separate applications for charity care and discount payment, then the applications do not need to state anything about the program distinctions.
- Subdivision (a)(2) is amended to read “patients who” instead of “patients that” for correct grammar.