

HEALTH

HEALTH SYSTEMS BRANCH

OFFICE OF HEALTH CARE FINANCING

Hospital Financial Transparency

Proposed Amendments: N.J.A.C. 8:96-1.2 and 9.1

Proposed New Rules: N.J.A.C. 8:96-5, 6, 7, and 9.2

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5, 5.1a, 5.1b, 12.50, and 14; and P.L. 2019, c. 513, § 2 (approved January 21, 2020).

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

Proposal Number: PRN 2022-141.

Submit written comments by January 6, 2023, electronically to

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

January 6, 2023, to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

N.J.A.C. 8:96, Hospital Financial Transparency, establishes standards applicable to hospitals that the Department of Health (Department) licenses pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as well as owners of hospitals. N.J.A.C. 8:96 became effective February 5, 2018, and operative March 7, 2018, with an administrative correction on May 6, 2019, 51 N.J.R. 617(a) (See 49 N.J.R. 1293(a); 50 N.J.R. 815(a)). N.J.A.C. 8:96 reflects an effort to stem a wave of sudden and unexpected closures of hospitals due to financial distress that went unobserved by surrounding communities and the Department before it was too late to ameliorate the distress and prevent the closures. 49 N.J.R. 1293(a).

Existing N.J.A.C. 8:96 implements certain recommendations contained in then-Commissioner Mary O'Dowd's July 17, 2014, report to the Governor, *Hospital Financial Transparency: Department of Health Recommendation on Hospital Financial Transparency* (Transparency Report), which is available on the Health Care Transparency web page of the Department at http://www.nj.gov/health/healthcare_transparency.shtml. See 49 N.J.R. 1293(a) for a more complete discussion of the circumstances surrounding the issuance of the Transparency Report.

The Transparency Report recommended requiring hospitals to: (i) post on their websites and provide to the Department their audited annual financial statements, including the four principal financial statements for each hospital that is part of a system, and to hold their annual public meeting within 60 days of posting its audited annual financial statements and make them available to attendees of the public meeting; (ii)

post on their websites and provide to the Department their unaudited quarterly financial statements, including the four principal financial statements for each hospital that is part of a system; (iii) disclose business transactions with interested persons to the Department and on the hospital's website; (iv) report to the Department annually the names of owners of five percent or more of the hospital; (v) make available to its patients and community that insurance networks it is in network with; and (vi) provide notice to the Department before it enters into a sale-leaseback agreement and provide the fact that it entered into a sale-leaseback agreement at its next annual public meeting.

N.J.A.C. 8:96-1.1, 1.2, 2.1, 2.2, 2.3, and 3.1, implemented recommendations and substantially implemented recommendation of the Transparency Report by requiring a hospital to: (i) post on its website and provide the Department its audited annual financial statements, including the statement of operations or income for each hospital in the State that is part of a system, and hold its annual public meeting within 60 days of posting its audited annual financial statements and make the statements available to attendees of the public meeting; and (ii) provide the Department its unaudited quarterly financial statements, including the statement of operations or income for each hospital in the State that is part of a system. The rules at N.J.A.C. 8:96 established enforcement remedies at N.J.A.C. 8:96-9.1.

The enactment of N.J.S.A. 26:2SS-1 et seq., the Out-of-Network Consumer Protection, Transparency, Cost Containment, and Accountability Act, effective October 1, 2018, obviated the need for rulemaking to implement Transparency Report recommendation (v), that Department rules should require a hospital to identify to its

patients and community the insurance networks within which they are “in network” providers.

On March 19, 2019, the State Commission of Investigation (SCI), pursuant to N.J.S.A. 52:9M-1 et seq., submitted to Governor Murphy a report of findings and recommendations addressing hospital-related oversight and accountability issues. The SCI report is available at <https://www.state.nj.us/sci/pdf/HospitalsReport.pdf>. The proposed amendments and new rules would implement certain recommendations made in the SCI report.

On January 21, 2020, Governor Murphy approved P.L. 2019, c. 513, “An Act concerning reporting requirements for hospitals and amending P.L. 2008, c. 58” (the Act). The Act amended N.J.S.A. 26:2H-5.1.b to require a hospital to annually, upon renewal of its license, post on its internet website the most recent public inspection copy that is available of Internal Revenue Service Form 990 and all schedules and supporting documents required to be submitted to the Internal Revenue Service in conjunction with Form 990; except that, if a hospital does not file a Form 990 with the Internal Revenue Service, the hospital shall post on its internet website all governance, financial, and operating information that would otherwise be reported on Form 990 for the prior tax year, including the information that would be required to be submitted in the schedules and supporting documentation in conjunction with Form 990, to the extent such information exists with respect to a for-profit hospital. The Act would also require that no less than 90 days prior to signing an agreement for the sale or the lease of the land or property on which a hospital is located, the hospital shall provide notice to the Department of the hospital’s intent to sign an agreement to sell or lease land or property

on which the hospital is located, and that such notification should include a copy of the agreement, the names of all parties included, and the intended use of proceeds from the sale or lease of land or property. The Act, at section 2, requires the Department to promulgate implementing rules. Pursuant to the Act, at section 3, the effective date of the Act was July 19, 2020.

The Department now proposes amendments and new rules that would address Transparency Report recommendations (iii), (iv), and (vi), establish additional enforcement remedies, and fulfill the Department's rulemaking obligations pursuant to the Act at section 2.

The Department proposes to amend existing N.J.A.C. 8:96-1 to increase the financial transparency of hospitals and assist in the prevention of hospitals becoming financially distressed due to undisclosed management contracts, payments to, or on behalf of, owners or related organizations, and business transactions with interested persons. The proposed amendments would address Transparency Report recommendations (iii), (iv), and (vi), and would require hospitals to: disclose business transactions with interested persons to the Department and on a hospital's website; annually report to the Department the names of owners of five percent or more of a hospital; notify the Department before it enters into a sale-leaseback agreement; and disclose the fact that it entered into a sale-leaseback agreement at its next annual public meeting. The proposed amendments and new rules would establish additional enforcement remedies.

The Department proposes to amend existing or add new definitions at N.J.A.C. 8:96-1.2 to include definitions of the following terms: "35 percent controlled entity,"

“asset,” “audit,” “audited financial statement,” “business transactions,” “control,” “controlled entity,” “controlling organization,” “‘director’ or ‘trustee,’” “disregarded entity,” “‘family member’ or ‘family relationship,’” “good and marketable,” “governing body,” “highest-compensated employee,” “interested person,” “IRS Form 990,” “joint venture,” “key employee,” “management company,” “net patient service revenue,” “officer,” “owner,” “related organization,” “reporting threshold,” “sale-leaseback agreement,” and “trustee”; and to amend the existing definition of the term “hospital,” to encompass all general and specialty heart hospitals licensed by the Department.

Proposed new Subchapter 5, Ownership Interests of Hospitals, Management Companies, and Related Organizations, would address hospital ownership interests, management companies, and related organizations. Proposed new N.J.A.C. 8:96-5.1, Ownership interests of hospitals, management companies, and related organizations, would require hospitals to disclose certain ownership interests, management companies, and related organizations to the Department.

Proposed new Subchapter 6, Business Transactions with Interested Persons, would address hospital business transactions with interested persons. Proposed new N.J.A.C. 8:96-6.1, Policy for business transactions with interested persons, would require a hospital to establish policies for business transactions with interested persons that include at least annual reporting to the Department and posting required information on the hospital’s website and establishes required disclosures applicable to nonprofit and for-profit hospitals. Proposed new N.J.A.C. 8:96-6.2, Disclosure requirement expiration, would establish that a hospital’s obligation to disclose business transactions with interested persons expires after the interested person’s relationship

with the hospital has been severed for at least five years. Proposed new N.J.A.C. 8:96-6.3, Interpretation of terms, would require certain terms at Subchapter 6 to be interpreted consistently with both the intent and the terms of Internal Revenue Service Form 990 and its instructions or any replacement thereto.

Proposed new Subchapter 7, Sale, Lease, Sale-Leaseback, or Other Transfer of Hospital Building or Grounds, would address sales, leases, sale-leasebacks, and other transfers of properties and/or buildings at which general and specialty heart hospitals exist. Proposed new N.J.A.C. 8:96-7.1, Advance written notice of any sale, lease, or sale-leaseback agreement, would require the hospital, and directors, officers, key employees, and highly compensated individuals, as well as any owner(s) of the hospital, to provide written notice to the Department at least 90 days prior to entering into certain sale, lease, or sale-leaseback agreements, by submission of the completed "Notice of Sale, Lease, or Sale-leaseback Agreement Form," which the chapter would incorporate by reference at N.J.A.C. 8:96-7.1. Proposed new N.J.A.C. 8:96-7.2, Sale, lease, or sale-leaseback agreement with a non-hospital owner or a director, officer, key employee, or highly compensated individual, as well as any owner of the hospital, would establish additional conditions for hospitals or a director, officer, key employee, or highly compensated individual, as well as any owner of the hospital, when they enter into a sale, lease, or sale-leaseback agreement involving the land and/or building at which a hospital is located. Proposed new N.J.A.C. 8:96-7.3, Disclosure of sale, lease, or sale-leaseback agreement, would require a hospital to disclose any executed sale, lease, or sale-leaseback agreements at its next annual public meeting.

Existing Subchapter 9, Enforcement Remedies, establishes enforcement remedies. The Department proposes to amend existing N.J.A.C. 8:96-9.1, Enforcement remedies and procedures, to establish the penalties applicable to hospitals for noncompliance with proposed new Subchapters 5, 6, and 7. Proposed new N.J.A.C. 8:96-9.2, Appointment of monitor, would establish that the remedies that N.J.S.A. 26:2H-5.1a establishes, including the appointment of a monitor and the attendant procedures and monitor compensation standards, are available to the Department with respect to hospitals engaging in business transactions with interested persons when the Commissioner determines that the hospital is in, or at risk of being in, financial distress.

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

Social Impact

If a hospital is in financial distress or becomes insolvent, interruptions of services and closure are possible outcomes. Sudden and unplanned interruptions of services and hospital closures can have immeasurable negative social impacts on the people in the surrounding community and Statewide, such as interruption of access to appropriate, high quality, and affordable health care.

Hospital services interruptions and closures can impair the livelihood of people whose economic well-being depends on a hospital continuing to operate successfully, such as hospital staff and surrounding local businesses, and can impose increased and unplanned strain on the resources of neighboring communities that must make up for the unavailability of services that were formerly provided by the closed hospital.

The proposed amendments and new rules would promote the financial transparency of hospitals and help to prevent hospitals falling into financial distress due to unreported business transactions with interested persons, ownership interests, or management companies. This rulemaking aims to help anticipate potential closures and possibly lead to fewer hospital closures, thereby enhancing the availability of reliable and consistent healthcare for patients and communities.

The proposed amendments and new rules would implement the Act, at section 2, and thereby provide guidance to the regulated community to comply with the Act.

Economic Impact

The Department expects that the proposed amendments and new rules would have a positive economic impact on hospital communities and patients in need of hospital services by ensuring proper financial transparency of hospitals and helping to prevent hospitals falling into financial distress due to undisclosed business transactions with interested persons. The proposed amendments and new rules would expand the instances in which the Department can appoint a financial monitor if a hospital is in danger of becoming, or becomes, financially distressed, aiming to prevent sudden hospital closures due to financial difficulties.

The proposed amendments and new rules would have an economic impact on hospitals subject to each of the new subchapters. Hospitals could incur professional services costs and additional staff costs associated with annually compiling and reporting: (i) names of owners, management companies, and related organizations, as well as their relative interests in the hospital, along with the organizational chart; (ii) business transactions with interest persons; and (iii) hospital sales, leases, and sale-

leaseback agreements. Many, if not all, hospitals already have a list of their owners and an organization chart as a routine business practice. Hospitals incorporated pursuant to 26 U.S.C. § 501(c)(3) annually prepare a Schedule L to their IRS Form 990, promulgated in accordance with 26 U.S.C. § 6033 and 26 U.S.C. § 501, listing business transactions with interested persons, which, by design, satisfies the requirements at Subchapter 6. Since for-profit hospitals, unlike non-profit hospitals, do not have to file an IRS Form 990, for-profit hospitals would likely incur additional professional services costs or additional staff costs to track, report, and post such transactions on their websites.

Hospitals and directors, officers, key employees, and highly compensated individuals, as well as any owner(s) of the hospital, may incur professional services costs and staff costs to provide notice of entry into sales, leases, or sale-leaseback agreements, including filing the “Notice of Sale, Lease, or Sale-Leaseback Agreement Form,” however, these additional potential costs, if any, are expected to be minimal and reasonably flow from the Department’s implementation of the financial transparency requirements, as outlined in the Act. As described in the Social Impact, the proposed new rules would require hospitals to disclose their: (i) owners, management companies, related organizations, and the organizational structures; (ii) business transactions with interested persons; and (iii) sales, leases, and sale-leaseback agreements. These disclosures could enhance the ability of the people of New Jersey to remain informed about the financial viability of the hospitals in their communities upon which they rely for their health care and/or livelihoods, and to meaningfully participate in early community responses to indications of hospital financial distress or instability. Early informed public

participation may help communities avoid sudden, unplanned hospital closures and the negative economic impacts that stem therefrom, such as increased costs to obtain health care, loss of jobs, erosion of the financial stability of workers' retirement plans, and impairment of the economies of the communities surrounding closed hospitals. These types of closures impact local providers of ancillary health care services (such as physicians' offices, durable equipment providers, pharmacies, and ambulance services) and local businesses that typically depend on hospital-related services, such as restaurants, florists, and gift shops. The proposed amendments and new rules establishing enforcement penalties would result in noncompliant hospitals incurring financial sanctions, and potentially incurring legal fees associated with defending against their imposition. The penalties would be subject to reduction on consideration of proposed mitigating factors.

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

Federal Standards Statement

There are no Federal standards applicable to the proposed amendments and new rules. The Department is not proposing the amendments and new rules pursuant to the authority of, or to implement, comply with, or participate in a program established pursuant to, Federal law or a State law that incorporates or refers to a Federal law, standard, or requirement. The Department proposes the amendments and new rules pursuant to the authority at N.J.S.A. 26:2H-1 et seq., particularly at 26:2H-5, 5.1a, 5.1b, 12.50, and 14; and P.L. 2019, c. 513, § 2 (approved January 21, 2020). Please note

that although a Federal standards analysis is not required, the Department did align its proposed amendments and new rules with Federal standards and definitions included on IRS Form 990, and its various schedules, to the greatest extent possible, given that nonprofit hospitals are already familiar with those requirements and submit information to the Federal government in accordance with them.

Jobs Impact

The Department does not expect that any jobs would be generated or lost in the State of New Jersey as a result of the proposed amendments and new rules. However, it is important to note that one of the underlying intentions behind the proposed amendments and new rules is to allow the Department to actively monitor hospitals for indications of financial distress and, in doing so, help mitigate and/or reduce the potential impacts. Through proactive monitoring of hospitals, the Department will be able to take steps to help support hospitals maintain their financial stability, which, in turn, will also help to ensure that employees of the hospitals remain employed.

Agriculture Industry Impact

The proposed amendments and new rules would have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The proposed amendments and new rules would impose requirements, conditions, and penalties only on hospitals licensed in New Jersey as a condition of licensure. The proposed amendments do not have any impact on and/or create any implications or differing treatment for groups considered to be “a small business” within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each

hospital employs greater than 100 people full-time. Therefore, the proposed amendments and new rules impose no requirements on small businesses, and a regulatory flexibility analysis is not necessary.

Housing Affordability Impact Analysis

The proposed amendments and new rules would have no impact on the affordability of housing in New Jersey and would not evoke a change in the average costs associated with housing because the proposed amendments and new rules would only address the financial transparency of hospitals and would not affect housing costs.

Smart Growth Development Impact Analysis

The proposed amendments and new rules would have no impact on the achievement of smart growth and would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments and new rules would only address the financial transparency of hospitals and would not affect housing development.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 1. GENERAL PROVISIONS

8:96-1.2 Definitions

(a) The following words and terms, as used in this chapter, shall **apply to both for-profit and nonprofit hospitals and** have the following meanings unless the context clearly indicates otherwise. **Financial terms should be interpreted consistently with Generally Accepted Accounting Principles (GAAP).**

“35 percent controlled entity,” means the same as that term is described in the instructions to IRS Form 990, Glossary, as it may be amended or superseded from time to time. Consistent with IRS Form 990, the term means an entity that is owned, directly or indirectly (for example, pursuant to constructive ownership rules of Internal Revenue Code Section 267(c)), by a given person, such as the organization's current or former owners, officers, directors, trustees, or key employees listed on IRS Form 990, Part VII, Section 1 regarding nonprofit hospitals and for-profit hospitals, or the family members thereof (listed persons) as follows:

- 1. A corporation in which listed persons own more than 35 percent of the total combined voting power;**
- 2. A partnership in which listed persons own more than 35 percent of the profits interest; or**
- 3. A trust or estate in which listed persons own more than 35 percent of the beneficial interest.**

...

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

"Asset" means the same as that term is defined in the Financial Accounting Standards Board Statement of Financial Accounting Concepts Statement No. 8, incorporated herein by reference, as amended or superseded.

"Audited" means the same as described in the instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the instructions to IRS Form 990, the term means a formal examination of an organization's financial records and practices by an independent, certified public accountant with the objective of issuing a report on the organization's financial statements as to whether those statements are fairly stated according to generally accepted accounting principles (or other recognized comprehensive basis of accounting).

"Audited financial statement" means the same as described in the instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the instructions to IRS Form 990, the term means financial statements accompanied by a formal opinion or report prepared by an independent, certified public accountant with the objective of assessing the accuracy and reliability of the organization's financial statements.

"Business transactions" means the same as that term is described in the instructions to Schedule L of IRS Form 990, as it may be amended or superseded

from time to time. Consistent with Schedule L of IRS Form 990, the term means transactions for which payments are made during the hospital's tax year between the hospital and an interested person. Business transactions include, but are not limited to, joint ventures and contracts of sale, lease, license, insurance, and performance of services, whether initiated during the organization's tax year or ongoing from a prior year.

“Control” means, for the purposes of determining related organizations, the same as that term is described in the instructions to IRS Form 990, Glossary, as it may be amended or superseded from time to time. Consistent with the instructions to IRS Form 990, control means:

1. **Control of a nonprofit organization (or other organization without owners or persons having beneficial interests, whether the organization is taxable or tax-exempt):** One or more persons (whether individuals or organizations) control a nonprofit organization if they have the power to remove and replace (or to appoint, elect, or approve or veto the appointment or election of, if such power includes a continuing power to appoint, elect, or approve or veto the appointment or election of periodically, or in the event of vacancies) a majority of the nonprofit organization's directors or trustees, or a majority of members who elect a majority of the nonprofit organization's directors or trustees. Such power can be exercised directly by a (parent) organization through one or more of the (parent) organization's officers, directors, trustees, or agents, acting in their capacity as officers, directors, trustees, or agents of the (parent) organization. Also, a (parent) organization controls a (subsidiary) nonprofit organization if a majority of

the subsidiary's directors or trustees are trustees, directors, officers, employees, or agents of the parent.

2. Control of a stock corporation: One or more persons (whether individuals or organizations) control a stock corporation if they own more than 50 percent of the stock (by voting power or value) of the corporation.

3. Control of a partnership or limited liability company: One or more persons control a partnership if they own more than 50 percent of the profits or capital interests in the partnership (including a limited liability company treated as a partnership or disregarded entity for Federal tax purposes, regardless of the designation pursuant to State law of the ownership interests as stock, membership interests, or otherwise). A person also controls a partnership if the person is a managing partner or managing member of a partnership or limited liability company which has three or fewer managing partners or managing members (regardless of which partner or member has the most actual control), or if the person is a general partner in a limited partnership which has three or fewer general partners (regardless of which partner has the most actual control). For this purpose, a “managing partner” is a partner designated as such pursuant to the partnership agreement, or regularly engaged in the management of the partnership even though not so designated.

4. Control of a trust with beneficial interests: One or more persons control a trust if they own more than 50 percent of the beneficial interests in the trust. A person's beneficial interest in a trust shall be determined in proportion to that person's actuarial interest in the trust as of the end of the tax year. See 26 CFR

301.7701-2, 3, and 4 for more information on classification of corporations, partnerships, disregarded entities, and trusts. Control can be indirect. See the Schedule R (IRS Form 990) instructions for a description of indirect control.

“Controlled entity” means the same as that term is described in the instructions to IRS Form 990, Glossary, as it may be amended or superseded from time to time. Consistent with the instructions to IRS Form 990, the term means an organization controlled by a controlling organization pursuant to I.R.C. § 512(b)(13). A controlled entity may be a nonprofit organization. For the definition of control in this context, see I.R.C. § 512(b)(13)(D) and 26 CFR 1.512(b)-1(l)(4) (substituting “more than 50%” for “at least 80%” in the regulation, for purposes of this definition). Controlled entities are a subset of related organizations. For purposes of this definition, controlled entities do not include disregarded entities of the filing organization.

“Controlling organization” means the same as that term is defined in I.R.C. § 512(b)(13) and the instructions to IRS Form 990, Glossary, as it may be amended or superseded from time to time. Consistent with I.R.C. § 512(b)(13) and the instructions to IRS Form 990, the term means an exempt organization that controls a controlled entity. The Internal Revenue Code Section 512(b)(13) treats payments of interest, annuity, royalties, and rent from a controlled entity to a controlling organization as unrelated business taxable income under certain circumstances. Control in this context means: (i) in the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation; (ii) in the case of a partnership, ownership of more than 50 percent

of the profits interests, or capital interests in such partnership; or (iii) in any other case, ownership of more than 50 percent of the beneficial interests in the entity. Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

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

1. By regular mail:

[Hospital Finance and Charity Care Program]

Office of Health Care Financing

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

2. By overnight delivery service or hand delivery:

[Hospital Finance and Charity Care Program]

Office of Health Care Financing

New Jersey Department of Health

[225 East State] **55 N. Willow** Street, [2nd Floor, West Wing] **5th**

Floor

Trenton, NJ [08608-1800] **08608**

3. (No change.)

“Director” or “trustee” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or

superseded from time to time. Consistent with the Instructions to IRS Form 990, the term means, unless otherwise provided, a member of the organization's governing body at any time during the tax year, but only if the member has any voting rights. A member of an advisory board that does not exercise any governance authority over the organization is not considered a director or trustee.

“Disregarded entity” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the Instructions to IRS Form 990, the term means an entity wholly owned by the organization that is generally not treated as a separate entity for Federal tax purposes (for example, single-member limited liability company of which the organization is the sole member). See 26 CFR 301.7701-2 and 3. A disregarded entity generally must use the EIN of its sole member. An exception applies to employment taxes: for wages paid to employees of a disregarded entity, the disregarded entity must file separate employment tax returns and use its own EIN on such returns. See 26 CFR 301.6109-1(h) and 301.7701-2(c)(2)(iv).

...

“Family member” or “family relationship” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the Instructions to IRS Form 990, the term means, unless specified otherwise, the family of an individual includes only his or her spouse (see IRS Revenue Ruling 2013-17 regarding

same-sex marriage), ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren.

...

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

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

2. The Governmental Accounting Standards Board (GASB) with respect to State and local governmental entities, as articulated in the *GASB Codification of Governmental Accounting and Financial Reporting Standards* ([2017] **2021**), as amended and supplemented, available at www.gasb.org, and from the GASB at 401 Merritt 7, PO Box 5116, Norwalk, CT [06856-5116] **06856**.

“Generally accepted auditing standards” or “GAAS” means the auditing standards that are generally accepted in the United States as authoritative, as specified in the AICPA *Professional Standards* ([2015] **2021**), as amended [and supplemented, available from the AICPA] **or superseded from time to time.**

“Good and marketable” means a title that is free from all liens, mortgages, security interests, encumbrances, and adverse claims or other charges.

“Governing body” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the Instructions to IRS Form 990, the term means the group of one or more persons authorized pursuant to state law to make governance decisions on behalf of the organization and its shareholders or members, if applicable. The governing body is, generally speaking, the board of directors (sometimes referred to as board of trustees) of a corporation or association, or the trustee or trustees of a trust (sometimes referred to as the board of trustees).

“Highest-compensated employee” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the Instructions to IRS Form 990, the term means one of the five highest compensated employees of the organization (including employees of a disregarded entity of the organization), other than current officers, directors, trustees, or key employees, whose aggregate reportable compensation from the organization and related organizations is greater than \$100,000 for the calendar year ending with or within the organization's tax year.

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

“Interested person” means the same as that term is defined in the instructions to Schedule L of IRS Form 990, as it may be amended or superseded from time to time. Consistent with Schedule L of IRS Form 990, the term includes:

- 1. A current or former officer, director, trustee, or key employee of the hospital;**
- 2. The creator or founder of the organization;**
- 3. Any individual or organization that made contributions during the tax year in the aggregate of at least \$5,000 and whose contributions are required to be reported on Schedule B of IRS Form 990, Schedule of Contributions, for the organization’s tax year;**
- 4. A member of a grant selection committee;**
- 5. A family member of an entity or individual described above;**
- 6. A 35 percent controlled entity; or**
- 7. An employee of a substantial contributor or of a 35 percent controlled entity.**

Additionally, regarding for-profit entities, an interested person shall include an owner of the hospital or related organization or any family member of an owner of the hospital or related organization.

“IRS Form 990” means Internal Revenue Service Form 990 and all related schedules, instructions, and glossaries thereto, incorporated herein by reference, as amended and supplemented.

“Joint venture” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from

time to time. Consistent with the Instructions to IRS Form 990, that term means, unless otherwise provided, a partnership, limited liability company, or other entity treated as a partnership for Federal tax purposes, as described at 26 CFR 301.7701-1 through 301.7701-3.

“Key employee” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the Instructions to IRS Form 990, that term means:

1. An employee of an organization (other than an officer, director, or trustee) who meets all three of the following tests applied in the following order:

i. \$150,000 Test. Receives reportable compensation from the organization and all related organizations in excess of \$150,000 for the calendar year ending with or within the organization’s tax year.

ii. Responsibility Test. The employee:

(1) Has responsibilities, powers, or influence over the organization as a whole similar to those of officers, directors, or trustees;

(2) Manages a discrete segment or activity of the organization that represents 10 percent or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or

(3) Has or shares authority to control or determine 10 percent or more of the organization's capital expenditures, operating budget, or compensation for employees; and

iii. Top 20 Test. Is one of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test) with the highest reportable compensation from the

organization and related organizations for the calendar year ending with or within the organization's tax year.

“Management company” means any company, organization, or person engaged by the hospital to manage any portion of the hospital’s operations or provide consulting or supervisory services to the hospital regarding its operations, property management, strategic planning, revenue cycle, or purchasing.

“Net patient service revenue” means the amount expected to be realized in cash, that is, gross revenue at established rates less contractual adjustments, discounts, and any other price concessions.

“Officer” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the Instructions to IRS Form 990 that term means, unless otherwise provided (for example, signature block, principal officer in heading), a person elected or appointed to manage the organization's daily operations at any time during the tax year, such as a president, vice-president, secretary, treasurer, and, in some cases, board chair. The officers of an organization are determined by reference to its organizing document, bylaws, or resolutions of its governing body, or as otherwise designated consistent with state law, but at a minimum, include those officers required by applicable state law. For purposes of these rules, treat the organization's top management official and top financial official as officers.

“Owner” means any person, partnership, corporation, company, trust, or any other organization that owns, directly or indirectly (including ownership by any family members), more than five percent of the voting rights, profit or beneficial interest in an organization, regardless of whether that interest is evidenced by shares, certificates, stocks, contract, agreement, or any other form used to represent a voting, profit, or beneficial interest, including any person whose combined ownership, individually or through a controlling interest in any other organizations, owns more than five percent voting, profit, or beneficial interest in the organization.

“Related organization” means the same as that term is described in the Glossary of the Instructions to IRS Form 990, as it may be amended or superseded from time to time. Consistent with the Instructions to IRS Form 990, that term means an organization, including a nonprofit organization, a stock corporation, a partnership or limited liability company, a trust, and a governmental unit or other government entity, that stands in one or more of the following relationships to the filing organization at any time during the tax year:

- 1. Parent: an organization that controls the filing organization.**
- 2. Subsidiary: an organization controlled by the filing organization.**
- 3. Brother/sister: an organization controlled by the same person or persons that control the filing organization. However, if the filing organization is a trust that has a bank or financial institution trustee that is also the trustee of another trust, the other trust is not a brother/sister related organization of the filing**

organization on the ground of common control by the bank or financial institution trustee.

4. Supporting/supported: an organization that claims to be at any time during the tax year, or that is classified by the IRS at any time during the tax year as: (i) a supporting organization of the filing organization within the meaning of I.R.C. § 509(a)(3), if the filing organization is a supported organization within the meaning of I.R.C. § 509(f)(3); or (ii) a supported organization, if the filing organization is a supporting organization.

5. Sponsoring organization of a voluntary employees' beneficiary association (VEBA): an organization that establishes or maintains a VEBA within the meaning of I.R.C. § 501(c)(9) during the tax year. A sponsoring organization of a VEBA also includes an employee organization, association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain a VEBA. Although a VEBA must report a sponsoring organization as a related organization, a sponsoring organization should not report a VEBA as a related organization, unless the VEBA is related to the sponsoring organization in some other capacity described in this definition.

6. Contributing employer of a VEBA: an employer that makes a contribution or contributions to the VEBA during the tax year. Although a VEBA must report a contributing employer as a related organization, a contributing employer should not report a VEBA as a related organization, unless the VEBA is related to the contributing employer in some other capacity described in this definition.

...

“Reporting threshold” for nonprofit hospitals means the minimum amount of business transactions with interested persons that must be reported pursuant to the instructions to Part IV of Schedule L of IRS Form 990, as it may be amended or superseded from time to time. Consistent with Schedule L, an organization must report business transactions with an interested person, if:

1. All payments during the tax year between the organization and the interested person exceeded \$100,000;

2. All payments during the tax year from a single transaction between such parties exceeded the greater of \$10,000 or one percent of the filing organization's total revenue for the tax year;

3. Compensation payments during the tax year by the organization to a family member of a current or former officer, director, trustee, or key employee of the organization listed in IRS Form 990, Part VII, Section A, exceeded \$10,000;

4. In the case of a joint venture with an interested person, the organization has invested \$10,000 or more in the joint venture, whether or not during the tax year, and the profits or capital interest of the organization and of the interested person each exceeds 10 percent at some time during the tax year; or

5. For for-profit hospitals, the reporting threshold shall be \$10,000 or any excess thereof.

“Sale-leaseback agreement” means an agreement, affecting property on which a hospital stands and/or a building in which a hospital operates, wherein, the hospital or a director, officer, key employee, or highly compensated individual, as well as any owner(s) of the hospital:

- 1. Agrees to sell the property and/or building to a purchaser; and**
- 2. Agrees, or expresses an intention, to lease the transferred property from the purchaser upon completion of the sale.**

...

SUBCHAPTER 5. OWNERSHIP INTERESTS OF HOSPITALS, MANAGEMENT COMPANIES, AND RELATED ORGANIZATIONS

8:96-5.1 Ownership interests of hospitals, management companies, and related organizations

(a) In addition to providing the information required pursuant to N.J.A.C. 8:43G-5.1(a), (b), (c), and (d), each hospital shall provide the Department, and post on its publicly available website, its organizational chart, which shall include the identity of any owner or related organization, along with the full name, address, and Federal tax-exempt status of each related organization, be it an entity or person.

(b) If the hospital is owned or managed by a for-profit organization, including an entity that has a majority ownership interest in the hospital, the hospital shall, by (within 45 days of the effective date of this rule) and thereafter, upon the filing of an application for the issuance or renewal of a license, provide to the Department:

- 1. The full name, location, mailing address, email address, and telephone number of each owner along with the respective percentage of each ownership interest;**

2. The identity of any interested persons of the hospital that do business with the hospital or any management company providing services to the hospital that maintain any offices, employees, or agents outside the United States and any revenues and expenses of more than \$10,000 transacted outside the United States;

3. A list of investors and joint ventures between the hospital's interested persons and its investors, including the name of the joint venture entity, whether that entity is for-profit or nonprofit, a description of its primary activity, and the percent of profit or stock ownership held by each of the owners, officers, directors, physicians, and key employees of the hospital;

4. The name, mailing address, email address, and phone number of any management company paid to provide services to the hospital in excess of five percent net patient service revenue for the prior fiscal year, along with the primary activity of the company, and the percent of equity or stock ownership held by each of the interested persons of the hospital in the management company;

5. Any amount paid to any related organization or person for management or consulting services;

6. A description of any trust that holds greater than a five percent interest in the hospital, including the name(s), mailing address(es), email address(es), and telephone number(s) of the trustee(es), beneficial owner(s), and grantor(s) or settlor(s) of the trust, and a copy of the full trust agreement;

7. A list of any real property for which the hospital has claimed a tax-exemption or tax abatement, and any agreements with a governmental entity for a payment in lieu of taxes; and

8. Each year, within 180 days of the end of the fiscal year, if the hospital had revenues in excess of expenses for the prior fiscal year, the total amount of any such revenues in excess of expenses used for each of the following: debt retirement, plant or facility expansion, renovation or maintenance, or a reserve for operating contingencies.

(c) Within 45 days of any changes in owners, interested persons engaging in business transactions with the hospital, investors, and joint ventures between hospitals and interested persons, management companies, related organizations, trusts, or tax-exempted or tax-abated properties described at (a) and (b)1 through 7 above, a written notice identifying such changes, including any respective changes to the additional information required by such subsection.

SUBCHAPTER 6. BUSINESS TRANSACTIONS WITH INTERESTED PERSONS

8:96-6.1 Policy for business transactions with interested persons

(a) Each hospital, regardless of whether it is for-profit or nonprofit, shall establish a policy regarding business transactions with interested persons that requires the hospital, at a minimum, to issue a report utilizing the same form that an I.R.C. § 501(c)(3) organization files as part of its IRS Form 990, Schedule L, Part IV, to report any business transaction it enters into with an interested person, during its fiscal year, that meets or exceeds the reporting threshold, and:

1. Annually submit the report to the Department by the 15th day of the sixth month after the end of the hospital's fiscal year; and

2. Post the report at a conspicuous place on the hospital's website, by the 15th day of the sixth month after the end of the hospital's fiscal year.

(b) As an alternative means of compliance with (a) above, a hospital operating pursuant to I.R.C. § 501(c)(3) may provide Schedule L, Part IV of its IRS Form 990 to the Department and display it on the Department's website.

(c) Prior to the due date, hospitals may apply, in writing, for an extension to the requirements to submit or post this information for good cause, which will be subject to the review and approval of the Department.

8:96-6.2 Disclosure requirement expiration

The obligation that N.J.A.C. 8:96-6.1 establishes, requiring hospitals to disclose business transactions with interested persons expires five years after the severance of the relationship between the interested person and the hospital.

8:96-6.3 Interpretation of terms

The terms applicable to this subchapter shall be interpreted consistently with the terms found in the IRS Form 990 and its instructions, including Schedule L thereto, as promulgated in accordance with I.R.C. §§ 501 and 6033 (26 U.S.C. §§ 501 and 6033), and shall apply equally to for-profit organizations, as well as organizations formed pursuant to I.R.C. § 501(c)(3).

SUBCHAPTER 7. SALE, LEASE, SALE-LEASEBACK, OR OTHER TRANSFER OF HOSPITAL BUILDING OR GROUNDS

8:96-7.1 Advance written notice of any sale, lease, or sale-leaseback agreement

(a) No fewer than 90 days prior to signing an agreement for the sale, lease, or sale-leaseback of property on, or building in which a hospital is located, the hospital shall provide notice to the Department of the intent to sign the agreement. Notification to the Department shall include a copy of the agreement, the names of all the parties to the agreement, and the intended use of proceeds from the sale or lease of land or property.

(b) If the land or property on, or building in which a hospital is owned by a director, officer, key employee, highly compensated individual, or any owner(s) of the hospital, those individuals shall, no fewer than 90 days prior to signing an agreement for the sale, lease, or sale-leaseback of land or property provide notice to the Department of the intent to sign the agreement. Notification to the Department shall include a copy of the agreement, the names of all the parties to the agreement, and the intended use of proceeds from the sale or lease of land or property.

(c) The hospital or the director, officer, key employee, highly compensated individual, or any owner(s) of the hospital shall provide written notice by completing and sending the Notice of Sale, Lease, or Sale-Leaseback Agreement Form, which can be found at: <https://healthapps.state.nj.us/forms/index.aspx> to the Department at least 90 days prior to entering into an agreement, and a copy of the proposed agreement, the names, mailing addresses, email addresses, and

telephone numbers of all parties involved, the intended use of the proceeds from the sale, lease, or sale-leaseback of land or property, and a review fee, made payable to the Treasurer, State of New Jersey.

(d) Subsection (a) above does not apply to agreements for property or buildings that are not essential to the functioning of a hospital, that is:

1. The hospital can fully function as an inpatient acute care without the sold and leased-back property and/or buildings;

2. The sale of the property and/or buildings will not interfere with the operation of the hospital as an inpatient acute care facility or prevent the title of the hospital from being considered good and marketable; and

3. The agreement will not have a materially negative impact on the hospital's finances that could endanger its ability to continue as an inpatient acute care facility for the foreseeable future.

(e) The following are examples of hospital property and/or buildings that are not essential to the functioning of a hospital:

1. Surface parking lots or parking structures;

2. Long-term care facilities, ambulatory surgery centers, urgent care centers, primary care centers, outpatient diagnostic or therapeutic radiology centers, and ambulatory care facilities; and

3. Outpatient services buildings, medical office buildings, and outpatient clinical laboratories.

8:96-7.2 Sale, lease, or sale-leaseback agreement with a non-hospital owner or a director, officer, key employee, or highly compensated individual, as well as any owner of the hospital

(a) The hospital shall ensure that a sale, lease, or sale-leaseback agreement transferring hospital property and/or buildings to a non-hospital owner or a director, officer, key employee, highly compensated individual, or any owner(s) of the hospital, shall contain:

1. A provision in which the proposed purchaser of the hospital property or building agrees and acknowledges that, despite its ownership interest, any action to discontinue hospital operations or transfer the hospital operating license is prohibited, absent Department approval upon review of an application for a certificate of need or license to undertake the action; and

2. An established and functioning governing body of the hospital operator remains responsible for institutional management and planning of the hospital.

8:96-7.3 Disclosure of sale, lease, or sale-leaseback agreement

(a) A hospital shall disclose a sale, lease, or sale-leaseback agreement as described at N.J.A.C. 8:96-7.1(a) that is executed for the land and/or building at which the hospital is located at the next annual public meeting the hospital holds pursuant to N.J.A.C. 8:96-3.1.

1. A written disclosure required pursuant to (a) above shall be made available to attendees that identifies the parties involved and the length of any lease agreements.

2. The hospital is encouraged, but not required, to disclose the financial terms of the sale, lease, or sale-leaseback agreement, to the extent practicable.

SUBCHAPTER 9. ENFORCEMENT REMEDIES

8:96-9.1 Enforcement remedies and procedures

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

1.- 3. (No change.)

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

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

6. For failure to timely submit to the Department and/or post on the hospital's website all required information about the ownership interests of the hospital, management companies, and related organizations in accordance with N.J.A.C. 8:96-5.1, \$200.00 per day until compliance occurs;

7. For failure to timely submit to the Department a report of a hospital's business transactions with interested persons in accordance with N.J.A.C. 8:96-6.1, \$200.00 per day until compliance occurs;

8. For failure to timely post on a hospital's website a report of business transactions with interested persons in accordance with N.J.A.C. 8:96-6.1, \$200.00 per day until compliance occurs;

9. For failure of the hospital to timely notify the Department of the intention of the hospital to enter into a sale, lease, or sale-leaseback agreement of the land on and/or building in which a hospital is located, in accordance with N.J.A.C. 8:96-7, \$200.00 per day, starting from the date at which notice to the Department should have occurred and until compliance occurs; and

10. For failure to disclose that a hospital has entered into a sale, lease, or sale-leaseback agreement at its next annual public meeting convened pursuant to N.J.A.C. 8:96-3.1, in accordance with N.J.A.C. 8:96-7.3, \$200.00 per day, starting from the date at which notice to the Department should have occurred and until compliance occurs.

(b) (No change.)

8:96-9.2 Appointment of monitor

If a hospital discloses to the Department a business transaction with an interested person pursuant to N.J.A.C. 8:96-6.1 and the Commissioner, upon consideration of the financial indicators detailed at N.J.S.A. 26:2H-5.1a and N.J.A.C. 8:31B-3, determines that a hospital is in, or is at risk of being in, financial distress, then the Commissioner may appoint, in consultation with the hospital, a monitor to prevent further financial deterioration of the hospital.