**HEALTH**

**HEALTH SYSTEMS BRANCH**

**CERTIFICATE OF NEED AND LICENSING DIVISION**

**OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE**

**Hospital Licensing Standards**

**Hospital Administration and General Hospital-wide Policies**

**Administrative and Hospital-wide Policies and Procedures**

**Independent Health Care Appeals Program Notice**

**Adopted Amendment: N.J.A.C. 8:43G-5.2**

**Adopted New Rule: N.J.A.C. 8:43G-5.6**

Proposed: April 18, 2016, at 48 N.J.R. 626(a).

Adopted: February 16, 2017, by Cathleen D. Bennett, Commissioner, Department of Health (with the approval of the Health Care Administration Board), in consultation with Richard J. Badolato, Commissioner, Department of Banking and Insurance and the State Board of Medical Examiners.

Filed: February 16, 2017, as R.2017 d.044, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-12 and P.L. 2011, c. 190, specifically N.J.S.A. 26:2S-14.3.

Effective Date: March 20, 2017.

Expiration Date: January 18, 2018.

**Summary** of Public Comment and Agency Response:

The Department of Health (Department) received one comment on the notice of proposal from Theresa Edelstein, Vice President, Post-Acute Care and Special Initiatives, New Jersey Hospital Association, Princeton, NJ.

1. COMMENT: The commenter "appreciates the opportunity to comment on proposed amendments and new rules at N.J.A.C. 8:43G that increase public awareness of the Independent Health Care Appeals [(IHCA)] Program," and states that the entity the commenter represents, "and its member hospitals have long supported consumer education, which is essential to providing appropriate and high-quality healthcare. Our hospitals believe that consumers need to understand all aspects of their health insurance benefits, and knowledge of their right to appeal a plan's decision regarding benefits is key to ensuring that consumers receive the care they have a right to as a subscriber. For that reason, [the commenter supports] the Department['s] efforts to ensure policies and procedures are in place to ensure that consumers have opportunities to be advised of their appeal rights."

RESPONSE: The Department acknowledges the commenter's support of the proposed amendment and new rule.

2. COMMENT: With respect to the proposed amendment at N.J.A.C. 8:43G-5.2(a), the commenter recognizes "the need to ensure that appropriate hospital staff are available to provide information on the [IHCA Program] process; however, … the most appropriate staff should be restricted to those that are directly involved with billing and providing financial counseling as well as patient advocacy. As the rule is currently proposed, direct care providers could potentially mean any number of providers in the

hospital setting from respiratory therapists to patient care assistants." The commenter is "concerned not only that it would be administratively burdensome to train hospital employees to respond to questions about the [IHCA Program] but additionally, would exponentially increase the risk of misinformation being provided." The commenter states that "appealing a [carrier's] decision to deny care is a three-stage process which ends with accessing the [IHCA Program]. A patient can only access [the IHCA Program] after meeting the carrier's internal appeals requirements. Requiring hospitals to have policies and procedures to ensure all direct care providers can make patients aware of the IHCAP could lead to confusion for the patient concerning the steps they must follow for the appeals process. Most hospitals already have well-established practices that any questions concerning benefit issues be directed to hospital-identified personnel." The commenter suggests that, for that reason, the Department should "either allow … hospitals to develop policies and procedures that ensure the appropriate staff, as defined by the hospital, are to be educated on the IHCAP or provide a clear definition of what positions are considered direct care providers."

RESPONSE: Proposed new N.J.A.C. 8:43G-5.2(a)13 would not require hospitals to "train hospital employees to respond to questions about," or "have policies and procedures to ensure all direct care providers can make patients aware of," the IHCA Program. It would require hospitals to have policies and procedures to ensure that "appropriate hospital staff … are made aware of," and are able to provide contact information for, the IHCA Program. The ability to provide an address and/or a telephone number is practically a ministerial act that is within the skill level of almost every worker, and certainly is within the skills of those that the rule would describe as

"appropriate hospital staff." It would not require training in a "three-stage" appeal process or the ability to answer questions about "benefit issues."

Proposed new N.J.A.C. 8:43G-5.2(a)13 tracks the text of N.J.S.A. 26:2S-14.1 in identifying the members of hospital staff that are "appropriate hospital staff" for purposes of compliance. N.J.S.A. 26:2S-14.1 requires hospitals to "ensure that appropriate hospital staff, including all direct patient care providers, staff that are concerned with billing for hospital services or provide financial counseling to patients, and staff otherwise engaged in providing patient advocacy or patient relations services, are made aware of the program and are able to provide information to patients and their family members, or other persons on the patient's behalf, about how to contact the program." The Department is without authority to narrow the scope of the "appropriate hospital staff" that the statute requires hospitals to make "aware of the program" and "able to provide information … about how to contact the program."

Neither N.J.S.A. 26:2S-14.1 nor the proposed amendment at N.J.A.C. 8:43G-5.2 would preclude hospitals from electing to establish policies and procedures that would direct "appropriate hospital staff," once they provide IHCA Program contact information, to refer patients to "hospital-identified personnel" who are knowledgeable in "benefit issues" for additional assistance and information about the IHCA Program.

For the foregoing reasons, the Department will make no change on adoption in response to the comment.

3. COMMENT: With respect to proposed new N.J.A.C. 8:43G-5.6(b), the commenter states that "[several] provisions already exist that govern the posting of information in

languages other than English." The commenter "[supports] the need to ensure that patients are not limited from asserting their rights to appeal a health plan's determination simply because of a language barrier and agree that if the notices are provided in languages other than English they be posted as required. However, consistent with another provision that requires notices to be provided in other languages, specifically N.J.A.C. 8:43G-17A.3(h)," the commenter encourages the Department "to limit the requirement to post notices to languages that are spoken by at least 10 percent of a hospital's patients. This will ensure the notices meet the needs of the patients without overwhelming patients with a barrage of notices that may obscure their own needs."

RESPONSE: The Department agrees with the commenter's assertion that posting notices in English, and in languages other than English, when the other languages do not achieve a minimum level of prevalence among hospitals' patient communities, could overwhelm patients and their families with excessive and irrelevant information, rather than inform them of the existence of the IHCA Program, and other information that might be posted nearby.

Throughout N.J.A.C. 8:43G, the Department has established several variations on "10 percent" as a minimum standard with respect to hospital's obligations to post and/or make available certain information in languages other than English. See N.J.A.C. 8:43G-4.1(a)27 (hospital to provide summary of patient rights "in the patient's native language if 10 percent or more of the population in the hospital's service area speak that language"), 5.2(a)10 (hospitals to make available written statement of patients' rights under New Jersey law to refuse medical care and to formulate advance

directives “in any language which is spoken as the primary language by more than 10 percent of the population of the hospital’s service area), 17A.3(h) (hospitals to translate into a language other than English, and post, the results of patients-to-staff counts and ratios if the other language “is the exclusive language spoken by at least 10 percent of a general hospital’s patients”), and 19.2(a)10ii (hospitals that provide obstetrics services to develop and distribute printed materials about infant feeding to prenatal patients in “all languages spoken exclusively by at least 10 percent of the hospital community”).

Based on the foregoing, the Department agrees with the commenter’s assertion that requiring the prevalence of a language other than English being spoken among at least 10 percent of a hospital’s service area, as a precondition to that hospital’s obligation to post a translated IHCA Program notice, is a reasonable and generally accepted minimum standard to warrant the provision of information in that language, and in English. Therefore, for these reasons, and the reasons that the commenter identifies, the Department will make a non-substantial change on adoption at proposed new N.J.A.C. 8:43G-5.6(b) to require a general hospital to post the IHCA Program notice in a language other than English (provided the Department of Banking and Insurance has made available a translated form of the notice in that language) if at least 10 percent of the population in a hospital’s service area speak the other language.

The change does not require additional notice and comment pursuant to N.J.A.C. 1:30-6.3. The change reduces the burden of the rule on the regulated community of hospitals. The change enhances the effectiveness of the rule in protecting the public. It increases the likelihood that patients and their families, from hospital service areas in which languages other than English obtain a minimal level of prevalence, will observe

IHCA Program notices and other postings of relevance to them, rather than be overwhelmed by the posting of many notices in many languages that are not commonly spoken in their respective communities.

## Federal Standards Statement

The Department is not adopting the amendment and new rule under the authority of, or to implement, comply with, or participate in, any program established under, Federal law or a State law that incorporates or refers to any Federal law, standard, or requirement. The Department is adopting the amendment and new rule under the authority of N.J.S.A. 26:2H-12 and 26:2S-14.3. Therefore, a Federal standards analysis is not required.

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

8:43G-5.6 Independent Health Care Appeals Program notice; posting

(a) (No change from proposal.)

(b) If the Department of Banking and Insurance makes available the IHCAP notice in a format translated into ***a*** language*[s]* other than English, ***and at least 10 percent of the population in*** a general ***hospital's service area speak that other language, the general*** hospital shall post the translated version*[s]* ***of the IHCAP notice in the other language***, in addition to the version in English, in accordance with (a) above.