

Center for Health Information and Analysis
Regulation 957 CMR 9.00: Hospital Financial Data Reporting Requirements
Effective March 24, 2016

INTRODUCTION

The proposed regulation governs the financial reporting requirements for acute and non-acute hospitals, including hospital cost reports, charge books, and quarterly and annual hospital financial data filings. The regulation requires each acute and non-acute hospital to file a cost report annually in accordance with the due dates specified in the Medicare 2552 Cost Report filing schedule, as determined by the Centers for Medicare and Medicaid Services (CMS). Each acute and non-acute hospital or parent organization shall also file an annual audited financial statement within 100 days after the end of the hospital's fiscal year or that of the parent organization. Each acute hospital must further file a quarterly hospital standardized financial filing within 45 days after the end of each quarter and an annual hospital standardized financial filing within 100 days of the end of its fiscal year. Additional acute and non-acute hospital reports must also be filed within the prescribed due dates.

The hospital financial data reporting requirements proposed on September 17, 2015 remain largely unchanged from those previously in effect. The few differences in 957 CMR 9.00 include cost report due dates that now align with cost report filing dates determined by CMS, fewer cost reporting categories, and new compliance language in accordance with M.G.L. c. 12C. The regulation also incorporates language from Administrative Bulletin 14-06: Top 10 Compensated Employees relating to employee salary and benefits information defines the terms "parent organization" and "consolidated entity"; and, adds a provision to state that if CHIA provides an assurance of confidentiality to a provider for information furnished pursuant to 957 CMR 9.05, then such confidential record or portion of the record shall not be subject to the disclosure provision of public records law.

The purpose of this regulation is to implement the requirements of M.G.L. c. 12C, § 8, which directs CHIA to collect information on revenues, charges, costs, prices, and utilization of health care services and other such data as CHIA may require of institutional providers and their parent organizations and any other affiliated entities, non-institutional providers and provider organizations.

DISCUSSION

I. Background

On September 17, 2015, CHIA proposed regulation 957 CMR 9.00: Hospital Financial Data Reporting Requirements. CHIA conducted a public hearing on the proposed regulation on October 28, 2015, and public comments regarding the proposed regulation were allowed through November 9, 2015. Two members of the public attended the hearing and neither individual provided testimony. CHIA received written comments from a hospital association and a provider regarding the proposed regulation. CHIA reviewed and considered the comments submitted in connection with this regulation. On March 24, 2016, CHIA adopted a final revised regulation that addresses the issues and concerns raised in the written comments provided on the proposed regulation. CHIA also made revisions to the regulation to modify the hospital cost reporting due date from March 1, 2016 to March 31, 2016 for hospitals with a

fiscal year ending between January 1, 2015 and September 30, 2015, to correct a drafting error by changing the hospital cost reporting due date from May 31, 2015 to May 31, 2016 for hospitals with a fiscal year ending between October 1, 2015 and December 31, 2015 and to modify the initial due date for Employee Compensation Reporting by Acute Hospitals from 45 days after the effective date of the regulation to August 15, 2016 and require that the initial filing include information from calendar years 2013 and 2014, rather than 2012 and 2013. The final regulation is effective March 24, 2016.

II. Regulatory Provisions Addressed in Testimony and Comments

Hospital Cost Report Due Dates

The proposed regulation provides due dates for each hospital financial reporting requirement. In an attempt to simplify submitting hospitals' reporting obligations, CHIA has endeavored to align its hospital cost reporting due dates with federal reporting due dates. The proposed regulation requires each acute and non-acute hospital to annually file a cost report with CHIA in accordance with the due dates specified in the Medicare 2552 Cost Report filing schedule, as determined by CMS. For the fiscal year 2015 filing, the proposed regulation requires that hospitals with a fiscal year ending between January 1, 2015 and September 30, 2015 file a cost report by March 1, 2016 and hospitals with a fiscal year ending between October 1, 2015 and December 31, 2015 file a cost report by May 31, 2015 (the date was drafted in error and is changed to May 31, 2016 in the final regulation).

Employee Compensation Reporting for Acute Hospitals

The proposed regulation requires that each acute hospital report to CHIA the total compensation, including salary and benefits information, paid by the hospital and/or any related organization to the top ten highest compensated employees of the hospital. The regulation defines an acute hospital as, "A hospital licensed under M.G.L. c. 111, § 51 which contains a majority of medical, surgical, pediatric, obstetric, and maternity beds, as defined by the Department of Public Health." The proposed regulation requires that each acute hospital file Employee Compensation Reports within 45 days after the effective date of 957 CMR 9.00 and, subsequently, file Employee Compensation Reports with CHIA annually by August 1st, although the latest extension date allowed by the IRS is August 15th. In past reporting periods, the reporting formats Column B and C for the Employee Compensation Reports provided a drop-down menu for hospitals to report the title and specialty of an employee and did not allow for free flowing text for situations where none of the drop-down options available were applicable or appropriate.

Audited Financial Statement Reporting At the Parent Level

Section 9.05 of the proposed regulation requires that "[e]ach parent organization shall submit a copy of the consolidated-level Audited Financial Statements as well as a Consolidating Schedule if an independent financial statement audit occurs at a consolidated level above that of the hospital." Section 9.05 further requires that "Consolidated Schedules must be accompanied by a signed statement by the consolidated entity's chief financial officer...." The terms "parent organization" and "consolidated entity" were not defined in the proposed regulation.

Assurances of Provider Confidentiality

Pursuant to G.L. c. 12C, § 5, CHIA "may specify categories of information which may be furnished under an assurance of confidentiality to the provider; provided, however, that such assurance shall only be furnished if the information is not to be used for setting rates." The proposed regulation does not

broadly characterize the types of information that providers could submit under an assurance of confidentiality. Instead, CHIA considers whether to provide assurances of confidentiality on a case-by-case basis with organizations that believe portions of their information should be redacted due to its confidential or proprietary nature.

Authority to Collect Audited Financial Statements from Organizations Conducting Non-Hospital Business

Pursuant to G.L. c. 12C, § 8, CHIA is granted the authority to monitor financial trends in the hospital industry. CHIA fulfills this responsibility by not only analyzing the financial statements of hospitals, but also by analyzing the financial statements of larger systems of which hospitals are a part.

Due Process for Imposition of Fines

The proposed regulation provides that, before CHIA may impose fines for non-compliance, CHIA shall give written notice to any acute or non-acute hospital or parent organization that fails to submit required data to CHIA on a timely basis or fails to correct submissions rejected because of errors. The regulation provides that, if the hospital or parent organization fails to provide the required information within two weeks following receipt of the written notice, they will be subject to a penalty of up to \$1,000 per week for each week that the hospital or parent organization fails to provide the required data, up to a maximum of \$50,000. G.L. c. 12C, § 11 specifically provides that CHIA may assess such penalties if the provider fails to provide the requested information “without just cause.” Neither the statute nor the regulation includes a hearing requirement. CHIA affords parties due process rights if the need to assess penalties arises.

Stakeholder Outreach for Regulation Promulgation

G.L. c. 12C, § 5, which grants CHIA rulemaking authority, requires that, after notice and hearing, CHIA may adopt regulations only upon consultation with representatives of providers, provider organizations, private health care payers and public health care payers. CHIA is also required to consult with other agencies of the commonwealth and the federal government, affected providers, and affected payers, as applicable, to ensure that the reporting requirements imposed under the regulations are not duplicative or excessive.

Governor’s Executive Order 562

The Governor’s Executive Order 562 requires each Agency proposing a new regulation to prepare a business/competitiveness impact statement that will include a competitiveness review and assess disruptive economic impacts on small businesses, and all other potentially impacted entities, including cities and towns, non-profit organizations and medium and large for profit enterprises. Under Executive Order 562, this business/competitiveness impact statement must be submitted with the regulation for review and approval by the Secretary of Administration and Finance. Executive Order 562 defines an Agency as a “secretariat, agency, department, board, commission, authority or other body within the Executive Department.” CHIA does not fall within this definition and therefore is not subject to Executive Order 562.

III. Analysis and Responses to Public Testimony and Comments

CHIA reviewed and carefully considered all comments submitted in connection with this regulation. The comments are summarized below with CHIA’s response following immediately thereafter.

A. Hospital Cost Report Due Dates (Section 9.04(2))

Comment: CHIA received comments from a hospital association voicing concerns that, for purposes of hospital cost reporting, a few hospitals' 2015 fiscal years may cross over the timeframe outlined in the proposed regulation. The hospital association requests that the regulation maintain the general timeframe as outlined in 9.04(2) and strike the language of 9.04(2)(a), which imposes different cost report due dates for different 2015 fiscal year-ends.

Response: After considering this comment, CHIA will maintain the language of 9.04(2)(a). While there may be some overlap in the 2015 and 2016 fiscal year filings, the proposed filing due dates do not require any hospital to submit their cost reports prior to when they will have to submit reports to CMS. In fact, hospitals with June 30th year-ends will have an extra three months to file with CHIA after filing with CMS.

Comment: CHIA received comments from a hospital association voicing concerns that producing both the Medicare and CHIA cost reports at the same time is not effective and may cause some reporting errors, because, once the Medicare Cost Report is completed and filed, it takes time to upload the data into a format that meets the state's instructions and to ensure that the data reported is accurate and corresponds to the Medicare data. The hospital association requests that CHIA consider providing hospitals with the opportunity to ask for an extension of at most two weeks after the Medicare Cost Report due date to submit the state-specific cost report version.

Response: In response to this comment, CHIA will allow hospitals to ask for up to a two week extension after the Medicare Cost Report due date to submit the state-specific cost report version to CHIA. The final regulation allows for this extension.

B. Employee Compensation Reporting for Acute Hospitals (Section 9.08)

Comment: CHIA received comments from a hospital association voicing concerns that the proposed regulation does not clearly identify which hospitals are required to report with regard to 957 CMR 9.08. The hospital association noted that the proposed regulation outlines the reporting requirement as pertaining to "Acute Hospitals," which are defined as, "A hospital licensed under M.G.L. c. 111, § 51 which contains a majority of medical, surgical, pediatric, obstetric, and maternity beds, as defined by the Department of Public Health." The hospital association emphasizes that there are non-acute hospitals that have both an acute and non-acute hospital license in order to receive reimbursement under the Medicare prospective payment systems and requests that CHIA clarify that this reporting requirement applies only to hospitals that have a majority of their services falling under the acute hospital definition and allow other hospitals to either provide a copy of their hospital license or any other appropriate documentation to demonstrate that they do not fall under the definition as outlined in the regulations.

Response: After considering this comment, CHIA will maintain the proposed regulation's definition of an acute hospital in the final regulation. This will require hospitals that have both an acute and non-acute license to file the Employee Compensation information.

Comment: CHIA received comments from a hospital association voicing concerns that the filing date for Employee Compensation Reporting by acute hospitals does not coincide with the IRS's filing extensions

for 990 Returns which may contain information required to be submitted within CHIA's Employee Compensation Reports. The hospital association notes that, under IRS rules, non-profit organizations have a specified timeframe to ask for a limited number of extensions to file their 990 Return and that the last date under the extension is August 15th. Therefore, if the IRS grants a hospital an extension allowing the hospital to file its 990 Return on August 15th, such hospital would not be able to comply with the CHIA reporting requirements as the internal data used for some 990 filings would not be ready by CHIA's August 1st due date. Accordingly, the hospital association requests that the filing date provided in 957 CMR 9.08(2)(b) be amended from August 1st to August 15th.

Response: In response to this comment, CHIA has changed acute hospital's filing due date for the Employee Compensation Report from August 1st to August 15th to match the latest extension date allowed by the IRS.

Comment: CHIA received comments from a hospital association voicing concerns that the reporting formats for the Employee Compensation Reports may not allow hospitals to provide the most accurate information. Specifically, the hospital association requests that CHIA consider two technical changes to the reporting formats Column B and C. In past reporting periods, those Columns provided a drop-down menu for hospitals to report the title and specialty of an employee. However, hospitals may need to add in free flowing text for individuals if none of the options available are applicable or appropriate, for example, when someone has more than one title or job that would help explain how the compensation is derived.

Response: In response to this comment, CHIA will update the template to allow for free text responses in Column B and C, but as this comment does not relate to the language of the regulation, no changes to the proposed regulation are necessary to address this concern.

C. Audited Financial Statement Reporting At the Parent Level (Sections 9.05, 9.07 9.10)

Comment: CHIA received comments from a provider voicing concerns that the terms "parent organization" and "consolidating entity" are not defined in section 9.05 which addresses audited financial statements reporting requirements, which the provider asserts creates a lack of clarity that has led in the past and may lead in the future to inconsistency in how systems have been categorized for the purposes of financial reporting. The provider referenced CHIA's website (www.chiamass.gov/massachusetts-acute-hospital-profiles-systems) as providing an example of inconsistent categorization of hospital systems by not designating a particular corporation as a healthcare system.

Response: In response to this comment, CHIA will add formal definitions for the terms "parent organization" and "consolidated entity" in the final regulation as follows. "Parent Organization" will be defined as "An entity that has a controlling financial interest in one or more subsidiaries." "Consolidated Entity" will be defined as "A group of entities that includes a parent and all its subsidiaries presented as those of a single economic entity."

957 CMR 9.05 seeks to more clearly describe the reporting requirements of Audited Financial Statements compared to the existing regulation 114.1 CMR 42.00. The terms "parent organization" and

“consolidated entity” are used in section 9.05 and the term “parent organization” is also used in sections 9.07(3) and 9.10.

CHIA disagrees with the provider’s additional comment regarding CHIA’s inconsistent classification of multi-acute hospital systems. In the publication referenced in the comment, CHIA included a footnote that explained why the corporation did not have a separate profile of its system.

D. Assurances of Provider Confidentiality (Section 9.05)

Comment: CHIA received comments from a provider voicing concerns that, in drafting a regulation that seeks to collect a wide variety of sensitive business information from acute and non-acute hospitals and, in some cases, their parent organizations which may conduct non-hospital business, CHIA did not specify categories of information which may be furnished under an assurance of confidentiality to the provider, pursuant to G.L. c. 12C, § 5. The provider requests that a provision be added to 957 CMR 9.00 to allow providers to submit information to CHIA under an assurance of confidentiality to the provider for certain categories of information, including proprietary business information about non-hospital activities, as well as additional categories designated after appropriate outreach to, and feedback from, the provider community.

Response: CHIA’s position is that all information within audited financial statements, including the notes to the financial statements, is material in understanding the financial performance and position of an organization. Therefore, CHIA is not in a position to broadly categorize in regulation the types of financial information that providers could submit under a promise of confidentiality.

CHIA remains open to having conversations on a case-by-case basis with organizations who feel information in their audited financial statements should be redacted due to its confidential or proprietary nature. To address this comment, CHIA will add a provision in the final regulation to state that if CHIA provides an assurance of confidentiality to a provider for information furnished pursuant to 957 CMR 9.05, then such confidential record or portion of the record, as the case may be, shall not be subject to the disclosure provision of public records law.

Specifically, the following language will be added to 957 CMR 9.05: “Information furnished pursuant to 957 CMR 9.05 under an assurance of confidentiality in accordance with G.L. c. 12C § 5 shall not be subject to the disclosure provision of the public records law. Any reasonable segregable portion of a record filed pursuant to this regulation shall be provided to any person requesting such records after deletion of the portions which are considered nonpublic under this paragraph.”

E. Authority to Collect Audited Financial Statements from Organizations Conducting Non-Hospital Business (Section 9.05)

Comment: CHIA received comments from a provider voicing concerns that G.L. c. 12C, § 8 does not provide CHIA with the authority to request audited financial statements from organizations above the hospital level that conduct non-hospital business. The provider expressed concerns that potentially proprietary information about non-hospital business is not the type of information CHIA is authorized to collect from parent organizations and is not collected for the purposes for which CHIA is directed to

collect financial information. The provider requests that, to the extent financial information about hospital and non-hospital business is blended in financial statements, CHIA should avail itself of its statute-given power to accept such information under assurances of confidentiality.

Response: G.L. c. 12C, § 8 grants CHIA considerable authority to monitor the financial condition of hospitals and financial trends in the hospital industry. It is impracticable to fulfil this responsibility by analyzing only the financial statements of a hospital if that hospital is part of a larger health system, as doing so ignores the reality that the financial performance and stability of hospitals is increasingly tied to larger consolidated entities.

E. Due Process for Imposition of Fines (Section 9.10)

Comment: CHIA received comments from a provider voicing concerns that 957 CMR 9.10 does not incorporate the “just cause” standard of chapter 12C or provide hospitals and provider organizations with an opportunity for a hearing prior to CHIA instituting penalties. The provider expressed concerns that 957 CMR 9.10 omits any mechanism for an entity to demonstrate its “just cause” to fail to provide requested information, and would allow CHIA to impose penalties whether or not “just cause” existed.

Response: The regulation is promulgated pursuant to G.L. c. 12C, which authorizes CHIA to institute penalties for late filings upon two weeks’ notice to the offending party. The statute does not include a hearing requirement. The regulation provides that, before CHIA may impose fines for non-compliance, CHIA must give written notice to any acute or non-acute hospital or parent organization that fails to submit required data to CHIA on a timely basis or fails to correct submissions rejected because of errors. G.L. c. 12C, § 11 specifically provides that CHIA may assess such penalties if the provider fails to provide the requested information “without just cause.”

CHIA works collaboratively with providers to assist them with submitting the required filings prior to assessing fines. CHIA has found this informal process to be for the most part effective. As such, CHIA does not need to codify into regulation a formal hearing process. CHIA will afford parties due process rights and consider whether the hospital or parent organization had just cause to fail to file the required information if the need to assess penalties arises.

F. Stakeholder Outreach for Regulation Promulgation

Comment: CHIA received comments from a provider voicing concerns that CHIA did not fulfill its obligation to consult with stakeholders in the health care community and other state and federal agencies before promulgating the regulation and, as an example, cites CHIA’s Small Business Impact Statement, which states that CHIA did not consult with the two non-acute hospitals that qualify as small businesses in the Commonwealth. The provider expresses concerns that there is no evidence that CHIA consulted with any affected agencies or hospitals and that CHIA did not consult the provider itself (a parent organization) regarding the proposed regulations when the proposed regulations appear to introduce new requirements for reporting on consolidated entities.

Response: In order to fulfill its obligation to conduct stakeholder outreach, CHIA conducted the following stakeholder engagement activities prior to proposing 957 CMR 9.00. First, CHIA hosted technical advisory group sessions related to modernizing the hospital cost report (Section 9.04) on April

11, 2014 and May 8, 2014, and maintained a public website to make available all technical advisory group issues and materials provided during those sessions. CHIA solicited MHA, Steward Health Care System, and EOHHS to identify key stakeholders that should be invited to these sessions.

Second, CHIA discussed the quarterly collection of standardized financial statements (Section 9.07) with MHA by phone on various occasions, although these reporting obligations remained largely unchanged from what was previously required.

Third, CHIA corresponded with MHA regarding acute hospitals' Employee Compensation Reporting (Section 9.08) in order to better align the filing requirements with IRS Form 990. The regulation now includes a requirement that was already in place pursuant to Administrative Bulletin 14-06: Top 10 Compensated Employees.

CHIA also received and considered comments from the commenting provider in numerous formats throughout the regulation process.

G. Governor's Executive Order 562

Comment: CHIA received comments from a provider voicing concerns that CHIA did not follow the Guidance of Governor Baker's Executive Order 562.

Response: The Governor's Executive Order 562 requires any Agency proposing a new regulation to prepare a business/competitiveness impact statement. Executive Order 562 defines an Agency as a "secretariat, agency, department, board, commission, authority or other body within the Executive Department." CHIA is an independent state agency and, as such, is not subject to the Governor's Executive Order 562.

IV. Summary of Final Regulation Changes

CHIA adopted a final revised regulation that addresses various concerns and issues raised in comments provided regarding the regulation. After considering these comments, CHIA (1) added language to the regulation to allow for up to a two week extension after the Medicare Cost Report due date to submit the state specific cost report to CHIA; (2) amended the filing due date for Employee Compensation Reporting from August 1st to August 15th to match the latest extension date allowed by the IRS; (3) defined the terms "parent organization" and "consolidated entity" for clarity; and, (4) added a provision to state that if CHIA provides an assurance of confidentiality to a provider for information furnished pursuant to 957 CMR 9.05, then such confidential record or portion of the record, as the case may be, shall not be subject to the disclosure provision of public records law.

Further, CHIA made revisions to the proposed regulation to modify the hospital cost reporting due date from March 1, 2016 to March 31, 2016 for hospitals with a fiscal year ending between January 1, 2015 and September 30, 2015, to correct a drafting error by changing the hospital cost reporting due date from May 31, 2015 to May 31, 2016 for hospitals with a fiscal year ending between October 1, 2015 and December 31, 2015 and to modify the initial due date for Employee Compensation Reporting by Acute Hospitals from 45 days after the effective date of the regulation to August 15, 2016 and require that the initial filing include information from calendar years 2013 and 2014, rather than 2012 and 2013.

CONCLUSION

The final regulation, as amended, implements the requirements of M.G.L. c. 12C, § 8, which directs CHIA to collect information on revenues, charges, costs, prices, and utilization of health care services and other such data as CHIA may require of institutional providers and their parent organizations and any other affiliated entities, non-institutional providers and provider organizations.