

**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**

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

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

Authorized By: Cathleen D. Bennett, Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board), and in consultation with Richard J. Badolato, Acting Commissioner, Department of Banking and Insurance and the State Board of Medical Examiners.

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

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

Proposal Number: PRN 2016-055.

Submit written comments by June 17, 2016, electronically to:

<http://www.nj.gov/health/legal/ecomments.shtml>, or by regular mail postmarked by June 17,

2016, 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.S.A. 26:2S-1 et seq., the Health Care Quality Act (Act), at N.J.S.A. 26:2S-11, as amended by Reorganization Plan No. 005-2005, establishes the Independent Health Care Appeals Program (IHCA Program) in the Department of Banking and Insurance (DOBI). N.J.S.A. 26:2S-11 states that the “purpose of the [IHCA] Program is to provide an independent medical necessity or appropriateness of services review of final decisions by [health insurance] carriers to deny, reduce, or terminate benefits in the event the final decision is contested by the covered person or any health care provider acting on behalf of the covered person ... with the covered person’s consent.”

P.L. 2011, c. 190, approved January 17, 2012, effective July 15, 2012, and codified at N.J.S.A. 26:2S-14.1 through 14.3 and 45:9-22.6, amended the Act to require, among other things, certain health care providers to post in specified locations a notice that provides information about the operation of, and how to apply for, the IHCA Program (IHCA Program notice). According to the Statement accompanying Senate Bill No. 2145, which became P.L. 2011, c. 190, this amendment to the Act “would increase public awareness of the” IHCA Program.

N.J.S.A. 26:2S-14.2 requires the Commissioner of the DOBI, in consultation with the Commissioner of the Department of Health (Department) and the State Board of

Medical Examiners (BME), to prescribe the size, content, and format of the IHCA Program notice and to make it available by posting it on the website of DOBI. DOBI establishes the IHCA Program notice at N.J.A.C. 11:24A-5.3 and 11:24A-5 Appendix (see 45 N.J.R. 720(a), 46 N.J.R. 808(a)). The rule was effective May 5, 2014, and operative August 3, 2014. DOBI maintains the IHCA Program notice on its website at <http://www.dobi.nj.gov/ihcpappeals>.

N.J.S.A. 26:2S-14.1 requires the Department to promulgate rules requiring general hospitals that the Department licenses to post the IHCA Program notice in conspicuous places in each of their waiting rooms and to ensure that “appropriate hospital staff” are made aware of the IHCA Program and are able to provide information to patients and their family members, or other persons on a patient’s behalf, about how to contact the IHCA Program.

N.J.S.A. 45:9-22.6 requires the BME to promulgate rules requiring physicians that the BME licenses to post the IHCA Program notice in their waiting rooms.

N.J.S.A. 26:2S-14.3 requires the Department and the BME, in implementing N.J.S.A. 26:2S-14.1 and 45:9-22.6, to promulgate the rulemaking that these sections require in consultation with each other and DOBI.

Based on the foregoing, the Department, in consultation with BME and DOBI, proposes an amendment and new rule at N.J.A.C. 8:43G-5, governing hospital administration and general hospital-wide policies, to implement N.J.S.A. 26:2S-14.1.

Existing N.J.A.C. 8:43G-5.2 establishes standards governing administrative and hospital-wide policies and procedures. The Department proposes to amend existing N.J.A.C. 8:43G-5.2 to add new paragraph (a)13, to require hospitals to have policies

and procedures to ensure that appropriate hospital staff, including direct care providers, staff that are concerned with billing for hospital services, or providing financial counseling to patients, and staff otherwise engaged in providing patient advocacy, are made aware of the IHCA Program, and are able to provide information to patients and their family members, or other persons on a patient's behalf, about how to contact the IHCA Program. The Department also proposes technical changes to improve sentence structure and enhance readability in the subsection lead-in text.

The Department proposes new N.J.A.C. 8:43G-5.6, Independent Health Care Appeals Program notice; posting, to require general hospitals to post the IHCA Program notice in conspicuous places in each of their waiting rooms, in the form that the DOBI promulgates and posts to its website. Proposed new N.J.A.C. 8:43G-5.6(b) would require general hospitals to post the IHCA Program notice in other languages in addition to English, if DOBI makes the IHCA Program notice available in other languages.

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

### **Social Impact**

The proposed amendment and new rule implement the amendment of the Act by P.L. 2011, c. 190. According to the Statement accompanying Senate Bill No. 2145, which became P.L. 2011, c. 190, this amendment to the Act would have the effect of increasing public awareness of the IHCA Program. The proposed amendment and new rule track the Act and thus would have the equivalent effect. The proposed amendment and new rule would have a beneficial social impact on members of the public who

maintain health benefits coverage from carriers that DOBI regulates by establishing additional sources of information from which patients, their family members, and others acting on patients' behalf, can learn of appeal rights related to carriers' determinations of medical necessity or appropriateness of services.

### **Economic Impact**

The proposed amendment and new rule may have a favorable economic impact on covered persons, general hospitals, and physicians if patients, or persons acting on their behalf learn, from either observance of a posted IHCA Program notice or an informed hospital staffer, of their appeal rights related to carriers' determinations of lack of either medical necessity or appropriateness of services and thereupon successfully appeal these determinations to the IHCA Program. Carriers who are unsuccessful in defending appeals of their determinations before the IHCA Program would realize a corresponding negative fiscal impact if they are required to provide previously declined benefits. General hospitals would incur administrative and training costs associated with printing and posting IHCA Program notices and training appropriate staff to provide information to patients, their families, and other persons acting on patients' behalf, about how to contact the IHCA Program.

### **Federal Standards Statement**

The Department is not proposing the proposed 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 proposing the proposed 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.

### **Jobs Impact**

The Department does not expect that the proposed amendment and new rule would result in the creation or loss of jobs in the State.

### **Agriculture Industry Impact**

The proposed amendment and new rule would not have an impact on the agriculture industry of the State.

### **Regulatory Flexibility Statement**

The proposed amendment and new rule would impose requirements that are applicable only to hospitals that the Department licenses, which are not small businesses within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

### **Housing Affordability Impact Analysis**

The proposed amendment and new rule would have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that they would evoke a change in the average costs associated with housing because the proposed amendment and new rule would impose notice posting and staff training requirements that are applicable only to hospitals that the Department licenses and would have no impact on housing costs.

### **Smart Growth Development Impact Analysis**

The proposed amendment and new rule would have an insignificant impact on smart growth development and there is an extreme unlikelihood that they would 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. The proposed amendment and new rule would impose notice posting and staff training requirements that are applicable only to hospitals that the Department licenses and would have no impact on development or housing.

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

8:43G-5.2 Administrative and hospital-wide policies and procedures

(a) [The] **A** hospital shall [have] **establish and implement** written policies, procedures, and bylaws that [are reviewed] **it reviews** at least once every three years[, revised] **and revises** more frequently as needed, [and implemented. They shall include] **including** at least:

1. – 10. (No change.)

11. Procedures for referral of patients requesting assistance in executing an advance directive or additional information to either staff or community resource persons that can promptly advise and/or assist the patient during the inpatient stay; [and]

12. Policies to ensure application of the hospital's procedures for advance directives to patients who are receiving emergency room care for an urgent life-threatening situation[.]; **and**

**13. Policies and procedures to ensure that appropriate hospital staff, including direct care providers, staff that are concerned with billing for hospital services or providing financial counseling to patients, and staff otherwise**

**engaged in providing patient advocacy are made aware of the Independent Health Care Appeals Program established pursuant to N.J.S.A. 26:2S-11, 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 Independent Health Care Appeals Program.**

**(b) – (l) (No change.)**

**8:43G-5.6 [(Reserved)] Independent Health Care Appeals Program notice; posting**

**(a) A general hospital shall post, in a conspicuous place in each of its waiting rooms for members of the general public, the notice about the Independent Health Care Appeals Program (IHCAP notice) entitled, “An Explanation of an Individual’s Right to Appeal Health Insurance Determinations,” in the form that the Department of Banking and Insurance promulgates pursuant to N.J.S.A. 26:2S-14.2 at N.J.A.C. 11:24A-5.3 and 11:24A-5 Appendix, and posts to its website at <http://www.dobi.nj.gov/ihcpappeals>.**

**(b) If the Department of Banking and Insurance makes available the IHCAP notice in a format translated into languages other than English, a general hospital shall post the translated versions, in addition to the version in English, in accordance with (a) above.**