November 12, 2019

Via Email: vharrell@dch.ga.gov

Norman Boyd, Chairman
Georgia Board of Community Health
2 Peachtree Street, N.W.
40th Floor
Atlanta, Georgia 30303

Re: Proposed Adoption of Rules and Regulations for Hospital Transparency, Ga. Comp. Rules & Regs., Rule 111-8-41

Dear Chairman Boyd:

On behalf of the Georgia Hospital Association (GHA) and its148 non-profit hospital members, we appreciate the opportunity to submit comments on the Georgia Department of Community Health's (the "Department's") proposed adoption of Rule 111-8-41 regarding hospital transparency (the "Proposed Rule"). The Proposed Rule is necessary to implement O.C.G.A. § 31-7-22, which became effective October 1, 2019, and contains financial transparency and reporting requirements for tax-exempt hospitals.

Hospitals have taken the new statutory transparency requirements very seriously. In anticipation of pending regulations, non-profit hospitals committed significant time and resources to meeting the October 1 posting deadline. According to a survey of our members, hospitals estimated that they spent an average of 80 hours preparing the information. This did not only impact large, urban hospital systems. Rural hospitals estimated spending an average of 67 hours preparing.[1]

Much of this time was spent gathering the requisite information; updating the IT infrastructure of hospital websites; working with outside vendors; and interpreting the requirements which in certain instances are inconsistent with the generally accepted accounting principles (GAAP) or other standards used by hospitals in the regular course of business. A review of hospital websites reveals widespread compliance with the new law. However, absent final guidance from the Department there have been reasonable but differing interpretations of the statutory requirements. This has resulted in a lack of uniformity across the state with respect to the type, scope and form of information posted.

GHA welcomes the Department's clarification of some terms used throughout the statute. However, because many of the provisions in the Proposed Rule remain open to interpretation that could lead to inconsistent reporting across the hospital community, GHA would like to take this opportunity to provide the following comments and recommendations in order to refine and clarify a few of the provisions.

[1] 36 hospitals responded to the survey, including 25 rural hospitals.

Defined Terms

O.C.G.A. § 31-7-22 contains relatively few defined terms, which has led to some confusion as hospitals attempt to comply with the law. GHA appreciates the additional definitions contained in the Proposed Rule. We provide the following comments in order to refine or clarify a few of the terms.

Administrative Position – **GHA supports the requirement that an Administrative Position be limited to a position with a gross annual salary of $100,000 or more.** This is similar to the limitation contained in the Internal Revenue Service (IRS) Form 990, which some tax-exempt hospitals are required to complete each year. Section 111-8-41-.04(2)(J) of the Proposed Rule requires hospitals to list their ten highest paid Administrative Positions. The salary floor helps small, rural hospitals which often do not have many non-clinical personnel and have been unsure of whether they are required to list the salaries of low-level positions relative to senior and executive level hospital administrators.

While the Proposed Rule's salary floor limits and clarifies the positions that require posting, the inclusion of management companies or other vendors in the definition of Administrative Position significantly expands it beyond the scope of the statute. The statute requires hospitals to

> …list the salaries and fringe benefits for the ten highest paid administrative positions in the hospital. Each position shall be identified by its complete, unabbreviated title. Fringe benefits shall include all forms of compensation, whether actual or deferred, made to or on behalf of the employee, whether full or part-time.

It is clear from the statutory text, which references fringe benefits, titles, salaries and employees, that the requirement to list the salaries for the ten highest paid administrative positions applies to those positions filled by individual employees, not to services performed by contracted entities. Furthermore, many vendor contracts contain non-disclosure clauses. The Proposed Rule would put hospitals at risk of breaching those contract provisions and potentially subject hospitals to breach of contract lawsuits. **GHA recommends revising the definition to read:**

"Administrative Position" shall mean a non-clinical hospital employee with a gross annual salary of $100,000 or more.

State Funds – **GHA supports the clarification that Medicaid funds are not included in the definition of State Funds.** As you know, Medicaid payments are financed by both state and federal funds under a complex web of federal regulations, the Medicaid state plan, the state Medicaid manuals and provider enrollment agreements. These state and federal requirements prohibit the state from denying Medicaid claims or cutting off Medicaid payments unless the certain requirements are met. When Medicaid claims are denied, health care providers are afforded appeal rights under the Medicaid program which would be separate from the hearing referenced in the Proposed Rule.

Required Documents, Posting Requirements and Enforcement

The Proposed Rule contains the statutory language of O.C.G.A. § 31-7-22(b) without interpretation to further clarify the documents and other information required to be posted by hospitals. As mentioned above, the statutory language is often subject to reasonably differing interpretations. The documents and information posted by hospitals under the Proposed Rule will likely continue to vary. This lack of uniformity may cause confusion as members of the public attempt to review and compare hospital financial and operational information.

The Proposed Rule allows for a hospital to have an opportunity to correct any deficiencies prior to the enforcement of any penalties against the hospital. However, the Proposed Rule does not provide a specific timeframe for such correction to occur. Depending on the type of deficiency, the amount of time necessary for correction will vary significantly. It will not be possible for hospitals to revise their financial documentation or to revise the audited financial statements to correct a deficiency prior to the next fiscal year without significant cost and delay.

Lastly, some hospitals may need to document and track financial information in new ways in order to break out the financial information required by the statute. At the time the Proposed Rule becomes effective, hospitals will be in various stages of preparing and finalizing their audited financial statements for the most recently completed fiscal year. **GHA respectfully requests that (i) the Proposed Rules not be applied retroactively so that hospitals are not required to revise their financial documents prior to the next fiscal year and (ii) the Department use its enforcement discretion to work with hospitals to determine a reasonable amount of time for the hospital to correct each deficiency.**

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Thank you for your consideration of our comments and recommendations. We would be happy to work with the Board to address any of the points above. Please feel free to contact me at 770-249-4564 or kconley@gha.org with any questions or if you desire to discuss these comments further or if we may help in any way.

Respectfully submitted,

Keri F. Conley
General Counsel &
Senior Vice President, Healthcare Policy