August 31, 2018

Scott Vivona, Acting Deputy Director
California Department of Public Health
Center for Health Care Quality
Attn: Regulations Unit, MS 3201
P.O. Box 99737
Sacramento, CA 95899-3201

Subject: AFL 18- 31, General Acute Care Hospital Employee/Personnel Records and Requirements Regulations

Dear Mr. Vivona:

On behalf of our more than 400 member hospitals and health systems, the California Hospital Association (CHA) respectfully offers the following comments on revising certain Title 22 regulations. CHA provided detailed recommendations for each section of Title 22 in 2011; the following recommendations update the sections for which the California Department of Public Health (CDPH) has solicited comments. CHA commends the CDPH Center for Healthcare Quality for beginning the significant and complex process of revising the cardiovascular surgery, cardiac catheterization laboratory, anesthesia services and surgical services sections of Title 22 as well as the sections pertaining to employees and personnel records. To assist in that effort, CHA offers the following general recommendations that we believe must be considered to achieve a successful outcome.

As CDPH is aware, the majority of Title 22 regulations are outdated and no longer relevant to current hospital delivery of care. Consequently, Title 22 precludes CDPH’s ability to provide effective oversight. Equally problematic, the current regulations are among the many obstacles California hospitals face in providing high-quality health care under tight financial restrictions, while utilizing the most current technological advancements. CHA applauds CDPH for undertaking the monumental task of rewriting Title 22, and underscores the need to ensure a proper foundation and infrastructure are created to support this endeavor.

It is important that updated regulations: 1) are consistent with existing laws and regulations, as well as national standards; 2) can be readily implemented at the facility and unit levels; 3) allow for innovation in a constantly changing environment, to ensure their requirements remain relevant for decades; and 4) are organized in a manner that facilitates clear understanding of the requirements and compliance. We also encourage CDPH to review existing program flexibility to identify current practice standards.

We request that CDPH critically review the regulations governing employee/personnel records and requirements and eliminate those that duplicate existing California labor and employment laws. California has the most comprehensive labor and employment laws in the country. The California Labor
Code has thousands of sections that cover such diverse topics as compensation, employee safety, access to records and work hours. Thus, while we appreciate CDPH’s interest in ensuring that records of an employee’s work hours are available, the department does not need to regulate that — it is already required by California Labor Code 226, as well as 8 C.C.R. § 11050 (7).

Similarly, it is unnecessary to specifically require hospitals to have “uniform rules [to be] established for each classification of employees concerning the condition of employment.” Our first concern is the vagueness, as the “conditions of employment” could be construed very broadly. Moreover, California law is replete with employer obligations to develop and disseminate uniform rules. For example, California Occupational Safety and Health Administration regulations require adoption of a variety of employee safety plans and policies (8 C.C.R. §§ 5120, 5193, 5199). As noted previously, the California Labor Code sets out a multitude of employer obligations with respect to conditions of employment. Further, the California Government Code has an array of anti-discrimination and leave of absence laws — including §§ 12940, 12945, 12945.2 and 12950 — with which employers must comply.

Additionally, as noted below, we recommend that specific requirements related to clinical services be included in the respective section, rather than reiterated throughout the regulations. For example, the requirement to train employees on methods of infection control should be placed in the infection control section. There does not appear to be any justification for calling out infection control and CPR training in the personnel records section.

Moreover, CHA recommends that CDPH:

**Require Hospitals to Adopt and Follow National Standards**

CHA strongly urges CDPH to consider aligning Title 22 requirements with the Centers for Medicare & Medicaid Services’ (CMS) Conditions of Participation (CoPs). If the department were to codify the existing CoPs in Title 22, those regulations would become outdated when CMS next updates the COPs. Instead, CDPH could adopt the standards by reference, to allow Title 22 regulations to remain relevant as CoPs change in the future. In addition, CHA believes that, to keep pace with existing standards of care, hospitals should be required to choose relevant national standards to use as a foundation for their policies and procedures. Facilities would base this decision on their patient population and the services they provide in each clinical service line. This will ensure that, as practice changes, Title 22 requirements remain relevant and hospitals continue to be held to the current community standard. Conformity with the CMS CoPs and the adoption of national standards in hospitals’ policies and procedures will eliminate inconsistencies, inefficiencies and confusion.

**Streamline Common Requirements for Basic and Supplemental Services**

For each basic and supplemental service, hospitals must establish written policies and procedures, have specified equipment and meet other common requirements. CHA recommends that regulations pertaining to administrative policies and procedures be streamlined for basic and supplemental service areas. For example, one section of Title 22 should require each clinical service line to develop and implement policies and procedures, based on national standards identified by the hospital; provide sufficient trained and qualified staff; and provide sufficient equipment to serve the needs of the patient population. This will reduce redundancy and improve consistency on the key provisions that are unique to a particular service.
Eliminate Title 24 Building Standards from Title 22
CHA wishes to emphasize that Title 22 should be rewritten to allow California hospitals to provide care and design buildings that meet the needs of modern health care delivery. The Office of Statewide Health Planning and Development has jurisdiction over hospital building standards, including square footage, electrical and ventilation, and other non-operational standards. CHA strongly encourages CDPH to immediately remove those requirements from Title 22, unless the department has identified an operational concern.

CHA’s recommendations are not an exhaustive list, but an initial submission during this pre-notice period. Moving forward, CHA is ready to assist CDPH in updating the Title 22 regulations to provide a structure for hospitals that supports the safe provision of patient care.

Thank you for the opportunity to comment as the department begins its work on these important regulations. We look forward to working with you. If you have any questions, please do not hesitate to contact me at drogers@calhospital.org or (916) 552-7575.

Sincerely,

Debby Rogers, RN, MS, FAEN
Vice President, Clinical Performance and Transformation

Attachments: Draft Regulatory Language - XXX
Draft Regulatory Language - XXX
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### Rationale

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<td>1.</td>
<td>Change “wage scales” to “compensation” as that is the current term and encompasses all types of compensation, not just base wages.</td>
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<td>2.</td>
<td>Change “objectives” to “procedures” as that term is more appropriate in this context. A hospital’s objective is to provide high quality patient care; employees must be educated on the policies and procedures in place to accomplish that objective.</td>
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<td>3.</td>
<td>Omit reference to “on-the-job training where necessary” as it is not appropriately placed with the obligation to provide an orientation. The concept was placed in the next subsection dealing with staff education.</td>
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<td>4.</td>
<td>Update and focus language on appropriate staff education—that covers on the job training, training on new procedures and equipment, etc.</td>
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<td>5.</td>
<td>Omit obligation to have appropriate reference material. That obligation is in the clinical section pertaining to the requirement to have a library.</td>
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### 22 CCR § 70719

**§ 70719. Personnel Policies.**

(a) Each hospital shall adopt written personnel policies concerning qualifications, responsibilities and conditions of employment for each type of personnel, which shall be available to all personnel. Such policies shall include but not be limited to:

1. Compensation/Wage scales, hours of work and all employee benefits.
2. A plan for orientation of all personnel to policies and procedures/objectives of the hospital, and for on-the-job training where necessary.
3. A plan for at least an annual evaluation of employee performance.

(b) Personnel policies shall require that employees and other persons working in or for the hospital familiarize themselves with these and such other regulations as are applicable to their duties.

(c) Hospitals shall:

1. Furnish written evidence of a plan for growth and development of the hospital staff through:
   - Designation of a staff member qualified by training and experience who shall be responsible for staff education; and
   - Provide appropriate staff education.
2. Reference material relevant to the services provided by the hospital which shall be readily accessible to the staff.

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### 22 CCR § 70721

**§ 70721. Employees.**

(a) The hospital shall recruit qualified personnel and provide initial orientation of new employees, a continuing in-service training program and competent supervision designed to improve patient care and employee efficiency.

(b) If language or communication barriers exist between hospital staff and a significant number of patients, arrangements shall be made for interpreters or for the use of other mechanisms to insure adequate communications between patients and personnel.

(c) The hospital shall designate a member of the staff as a patient discharge planning coordinator.

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1. Omit reference to orientation and staff education as that is covered in section 70719.
2. Omit the requirement with regard to interpreters as that issue should be addressed in the clinical areas. Further, Health and Safety Code 1259 fully addresses the issue so it is recommended that wherever the language is placed it refer to that code section. For example, “the Hospital shall adopt and review annually a policy for providing language assistance services to patients with language or communication barriers.”.
3. Omit reference to a designated discharge planner as that should be covered in the appropriate clinical section.
4. Revise to clarify that “students and interns” are not employees and replace outdated term “vocational.”
5. Omit reference to training in hospital infection control and cardiopulmonary resuscitation. Those requirements should be covered in the appropriate clinical section.
6. Omit the last section as it is redundant to various components of section 70719.
(d) All employees, including residents, of the hospital having patient contact, as well as including students and interns and residents, shall wear an identification tag bearing their name and vocational job classification or title.
(e) Appropriate employees shall be given training in methods of hospital infection control and cardiopulmonary resuscitation.
(f) Uniform rules shall be established for each classification of employees concerning the conditions of employment. A written statement of all such rules shall be provided each employee upon commencing employment.

§ 70723. Employee Health Examinations and Health Records.
(a) Personnel evidencing signs or symptoms indicating the presence of an infectious disease shall be medically screened prior to having patient contact. Those employees determined to have infectious potential as defined by the Infection Control Committee shall be denied or removed from patient contact until it has been determined that the individual is no longer infectious.
(b) A health examination, performed by a person licensed and legally authorized as a practitioner in the relevant scope of practice lawfully authorized to perform such an examination, shall be required as a requisite for employment and must be performed within one week after employment. Written examination reports, signed by the person performing the examination, shall verify that employees are able to perform assigned duties.
(1) Initial examination for tuberculosis shall include a test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA). If the result is positive, a chest X-ray shall be obtained. If a person has a previously documented positive tuberculosis test result, a test for tuberculosis infection need not be done but a baseline chest X-ray shall be obtained.
(2) Policies and Procedures that address the identification, employment utilization and medical referral of persons with positive tuberculosis tests including those who have converted from negative to positive shall be written and implemented.
(3) An annual tuberculosis test shall be performed on those individuals with a previously documented negative tuberculosis test. If an individual with a previously
documented negative tuberculosis test has a subsequent positive tuberculosis test result, a chest X-ray shall be obtained.

(4) Less frequent testing for tuberculosis, but never less than every four years, may be adopted as hospital policy when documented in writing as approved by the Infection Control Committee, the medical staff and the health officer of the health jurisdiction in which the facility is located.

(c) Employee health records shall be maintained by the hospital and shall include the records of all required health examinations. Such records shall be kept a minimum of three years following termination of employment.

(d) Personnel shall be made aware of recommended vaccinations for preventable diseases that can be prevented by vaccination.


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<td>§ 70725. Employee Personnel Records. All hospitals shall maintain employment records of all employees. Such records shall be retained for at least three years following termination of employment. The record shall include the employee’s full name, Social Security number, the license or registration number, if any, brief resume of experience, employment classification, date of beginning employment and date of termination of employment. Records of hours and dates worked by all employees during at least the most recent six-month period shall be kept on file at the place of employment.</td>
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| 1. Replace reference to “personnel records” with more current term “employment records.” |
| 2. Omit requirement pertaining to records of hours and dates of work as this is required by California Labor Code Labor Code 226 and 8 C.C.R. § 11050(7). |
| 3. Omit requirement pertaining to maintaining records at the place of employment as this is covered by California Labor Code 226. |

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<td>§ 70727. Job Descriptions. Job descriptions detailing the functions of each classification of employee shall be written and shall be available to all personnel.</td>
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