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(Supersedes November 22, 2022 Version)

TO: Chief Executive Officers
Chief Data / Privacy Officers
New Jersey General Acute Care Hospitals

FROM: Erica Holmes, Executive Director
Office of Health Care Financing
New Jersey Department of Health

SUBJECT: **Revised** Guidance Memorandum Regarding Recording, Reporting and Training Requirements for Race, Ethnicity, Sexual Orientation, and Gender Identity of Patients, as required by N.J.S.A. 45:9-42.47 and N.J.S.A 26:2H-5.36

The New Jersey Department of Health (Department), Office of Health Care Financing (OHCF), is issuing this guidance memorandum to inform general acute care hospitals (hospital or hospitals) licensed to operate in New Jersey of new statutory requirements. Specifically, N.J.S.A. 45:9-42.47 and N.J.S.A 26:2H-5.36, P.L. 2021, c. 454 as amended by P.L. 2022, c.44, were recently enacted, which require: 1) hospital electronic medical records systems to include demographic data entry features; and 2) hospitals to implement cultural competency training programs. The new statutory requirements took effect on January 18, 2023. A copy of the new law is attached to this guidance memorandum. **Please note that this memorandum does not address the separate and distinct requirements for clinical laboratories. Hospitals with clinical laboratories should refer to the Department's Clinical Laboratory Improvement Services (CLIS) Guidance Memorandum, dated December 16, 2022, for more specific information on clinical laboratory compliance as well as accepted SOGI terms and selections.** The guidance for hospitals is as follows:

1. Electronic Medical Records / Data (N.J.S.A. 45:9-42.47):

N.J.S.A. 45:9-42.47 states that hospitals using an electronic medical records technology/system, whether managed in-house or purchased through a third-party vendor in the State, must take appropriate steps and implement necessary safeguards to ensure that the technology/system is configured in a manner that prevents an authorized user from saving or storing a patient's demographic information into the electronic medical records management technology/system, unless a selection for patient's racial, ethnic, sexual orientation and gender identity (SOGI) information is recorded.

If a hospital has more than one electronic medical records system where demographics are captured (for instance, a registration system and a practice management system), the hospital is required to configure at least one system in a manner that prevents an authorized user from saving or storing a patient's demographic information unless a selection for SOGI, racial, and ethnic information is recorded. Although the hospital is required to configure only one

system, the SOGI, racial, and ethnic information must be recorded in all electronic medical records systems that the hospital utilizes.

In the event that a hospital's electronic medical record system was not configured by January 18, 2023 to prevent an authorized user from saving or storing a patient's demographic information unless a selection of a patient's SOGI, racial, and ethnic information is recorded, the Department will impose necessary corrective action. The Department will provide a hospital with an additional 120 days from the January 18, 2023 effective date to comply with N.J.S.A. 45:9-42.47, if the hospital submitted the *Corrective Action Attestation Form* (the Form). Hospitals should have filed the Form and reported the required information to the Department by January 18, 2023. The Form requires a hospital to describe the specific steps it will take to achieve compliance within 120 days following the January 18, 2023 effective date; acknowledge legal obligations and penalties; and provide relevant vendor information. Completed Forms may be submitted to the Department via email to financial.reports@doh.nj.gov, or via U.S. Mail at either of the following addresses:

Regular Mail:

New Jersey Department of Health
Office of Health Care Financing
Attn: Financial Reporting Unit
55 N. Willow Street, 5th Floor
P.O. Box 360
Trenton, NJ 08625

Overnight Delivery:

New Jersey Department of Health
Office of Health Care Financing
Attn: Financial Reporting Unit
55 N. Willow Street, 5th Floor
Trenton, NJ 08608

Upon receipt of a hospital's signed *Corrective Action Attestation Form*, the Department will review and determine whether additional corrective action steps are needed.

2. Cultural Competency Training (N.J.S.A 26:2H-5.36):

N.J.S.A. 26:2H-5.36 requires hospitals to implement an evidence-based cultural competency training program for all staff members, employed by or working under the supervision of the hospital, who have direct contact with patients and are responsible for collecting race, ethnicity, and SOGI information from patients.

Each cultural competency training program implemented by hospitals must include training on how to collect race, ethnicity, and SOGI information from patients in a culturally competent and sensitive manner and may include the following topics/components:

1. Common terminology for race, ethnicity, and SOGI data;
2. Information on the relationship between patient health and collecting race, ethnicity, and SOGI data;
3. Information on how race, ethnicity, and SOGI data will be used;
4. Information on how to navigate discomfort in patients and staff when asking patients for their race, ethnicity, and SOGI information; and
5. Information on how to create an inclusive and affirming environment for all patients.

Hospitals are also responsible for ensuring that each staff member, who is employed by or working under the supervision of the hospital, has direct contact with patients and is responsible for collecting race, ethnicity, and SOGI information from patients: (1) completes the cultural competency training program at such times and intervals as the hospital shall require, and (2) completes a cultural competency refresher course at least once biennially if completion of the course is deemed necessary by the hospital.

Please review N.J.S.A. 45:9-42.47 and N.J.S.A 26:2H-5.36 carefully to ensure your hospital's compliance. Please direct any further questions regarding the contents of this memorandum to the Department via email at Erica.Holmes@doh.nj.gov. Thank you.

References:

N.J.S.A. 45:9-42.47 and N.J.S.A 26:2H-5.36
Corrective Action Attestation Form