FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION

CHARLIE CRIST
GOVERNOR

Better Health Care for all Floridians

ELIZABETH DUDEK
INTERIM SECRETARY

December 8, 2010

Jowanna N. Oates
Senior Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, FL 32399-1300

Dear Ms. Oates,

I am in receipt of your letter of November 18th regarding the applicability of new provisions of Chapter 120.54 and 120.541 to the revisions we recently promulgated to rule 59E-7 and 59B-9 of the Florida Administrative Code. You specifically asked whether these rule revisions require legislative ratification pursuant the new 120.541(3) F.S.

It is our belief that the rules do not require the drafting of a Statement of Estimated Regulatory Impact (SERC) in that they neither;

- Adversely impact small business, nor;
- Directly or indirectly increase regulatory costs in the aggregate by more than $200,000 within one year after implementation

We base this conclusion on conversations and correspondence we have had with the Small Business Regulatory Advisory Council. It was determined that these impacts were so small as to not require a SERC. A copy of the correspondence is attached for your assistance.

Given that there are no alternative methods to implement the only change with any negative impact (59B-9.031), we respectfully submit that the rule amendments in question do not require legislative ratification. Let me know if you have any questions or would like more information.

Sincerely,

Patrick W. Kennedy
Administrator, Office of Data Collection, Quality Assurance and Patient Safety

Attachment

cc: Bill Roberts, Deputy General Counsel

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FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION
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October 12, 2010

Vicky L. Baker, Program Coordinator
Small Business Regulatory Advisory Council
UWF – Building 38
11000 University Parkway
Pensacola, FL 32514-5750

Dear Ms. Baker,

In response to your letter of September 9, I am writing to outline our understanding of the regulatory costs of our proposed revisions to administrative rules 59E-7 F.A.C. and 59B-9 F.A.C., particularly their impact on small business. We at the Agency for Health Care Administration (Agency) share your desire to minimize regulatory burdens and only move forward with rules that are both necessary and as narrowly drawn as possible. We believe that the recently published revisions to the above-referenced rules meet those requirements.

While I understand that your concerns center on rule 59B-9.031, I would also like to address my comments to its companion rule 59E-7 as I hope to preemptively answer any concerns that might arise about that rule as well.

The changes to rule Section 59E-7 were promulgated in response to changes made in the "universal" bill (UB04) used by all hospitals. In an effort to reduce the regulatory burden placed on facilities who report to the Agency, we have aligned our patient data collection program with the UB04 as much as possible. However, recent changes to the UB04 made by the National Uniform Bill Committee (NUBC) made it difficult for hospitals to report essential data. This data is essential to the Agency because without it we could not comply with legislative reporting requirements contained in Chapter 408 F.S. The Florida Hospital Association has assured the Agency that the changes contained in the draft 59E-7 will recapture the data and reduce compliance costs for regulated businesses.

The changes contained in the draft rule Section 59B-9 (specifically rules 59B-9.031, 59B-9.032, 59B-9.034, 59B-9.038) were promulgated at the request of the State Consumer Health Information and Policy Advisory Council (Advisory Council). The Advisory Council is a statutorily-created (408.061 F.S.) body of private stakeholders that advises the Agency on patient data collection and dissemination.

The Advisory Council feels that the dissemination of patient-level data through the FloridaHealthFinder.gov website is an important part of the State's efforts to promote quality and reduce cost in Florida's healthcare marketplace. They feel that the current reporting exemption for ambulatory surgical facilities that treat fewer than 200 patients in a given quarter weakens that effort. At its June 17th meeting the Advisory Council unanimously urged the Agency to promulgate rules to remove the reporting exemption. Please note that we have little latitude in how we comply with the request. There is only one way to remove the exemption, and that is through the rule changes in question.

The removal of the exemption will impose a relatively small cost on a relatively small number of facilities. Our records indicate it will require approximately 56 ambulatory surgical centers (ASCs) to submit patient data that have never done so [Note: we do not consider the rule to impose any meaningful new costs to centers who are already reporting at least intermittently]. The largest vendor of patient data reporting services to ASCs charges an upfront fee of $1,500 with an additional fee of $125 per reporting quarter. This means ASCS could reasonably expect to pay $2,000 the first year and $500 every year after that to comply with the rule. This does not including staff time, which would be minimal as long as there are no significant errors in the ASCs data (such as listing a woman as having received a vasectomy).

The rules will impose no additional costs on state or local governments, as the changes only require an incremental increase in current programs. It is not expected that either rule will impact state or local government revenues.

Sincerely,

Patrick W. Kennedy
Administrator, Office of Data Collection, Quality Assurance and Patient Safety

Attachment: SERC for 59B-9

cc: Beth Eastman, Acting Director
Florida Center for Health Information and Policy Analysis