



November 13, 2025

Kim Johnson
Chair, Health Care Affordability Board
2020 W El Camino Ave.
Sacramento, CA 95833

Subject: OHCA Must Pursue a Collaborative Approach to Enforcement That Considers Uncontrollable and Desirable Spending Growth
(Submitted via Email to Megan Brubaker)

Dear Chair Johnson:

California's hospitals share the Office of Health Care Affordability's (OHCA's) goal to create a more affordable, accessible, equitable, and high-quality health care system. On behalf of nearly 400 hospitals, the California Hospital Association (CHA) appreciates the opportunity to comment.

Further Clarity Is Needed for Enforcement Process

OHCA's legislative mandate not only directed it to improve health care affordability, but to balance affordability with maintaining and improving access, quality, equity, and workforce stability. As OHCA analyzes cost growth, it must consider the impending Medicaid impacts from the One Big Beautiful Bill Act and the potential expiration of the federal enhanced premium tax credits, along with cost increases due to various economic factors and policies (e.g., tariffs, inflation, labor cost pressure). OHCA must provide entities that exceed the target a meaningful opportunity "to respond and provide additional data to explain all or a portion of the entity's cost growth in excess of the applicable target" and avoid further enforcement (see HSC § 127502.5 (b)(2) and (3)). Without such an opportunity, health care entities will have no choice but to slash spending and investment in ways that ultimately impede OHCA's broader goals for the health care system aimed at promoting access, quality, and equity.

The October board meeting featured an extensive discussion of how the enforcement process would be carried out. However, it did not clearly convey how OHCA will ultimately enforce compliance with the spending targets. California's hospitals urge the OHCA board to revisit key parts of these discussions in the coming months and codify, in regulation, detailed rules for each component of the enforcement process.

Decision to Forgo Waiver Process Requires Reconsideration

OHCA staff stated its intent to **not** implement the waiver process established in law, and instead use an alternative process that ostensibly would achieve similar ends. In discussion to date, OHCA touts that this alternative process would allow greater flexibility. This decision raises serious questions — most notably by running counter to the intent and letter of OHCA’s authorizing legislation. OHCA states that the alternative process would better allow it to “prioritize” enforcement actions — but what this means, and what factors would inform that prioritization, are unclear. Significantly more information is needed and clear rules for prioritization must be codified in regulation to avoid any appearance of arbitrary decision-making.

Additionally, OHCA states that the waiver process outlined in statute overly restricts the factors that may be considered when determining enforcement actions; its alternative process would purportedly allow broader range of factors to be considered. However, the factors contemplated in the waiver provision of statute are broad — they include factors outside an entity’s control, anticipated costs for investments, and extraordinary circumstances. Together, these factors encompass most if not all the “potential enforcement considerations” that OHCA seeks to incorporate through its alternative process. OHCA should clarify which factors it believes could not be considered under the waiver process.

Finally, OHCA should clearly articulate in future board discussions any other flexibilities it is seeking in the enforcement process, beyond the aforementioned. Absent clear and convincing answers to all these questions — most importantly, why it is appropriate for OHCA to forego the waiver process clearly established in law for rendering enforcement decisions — OHCA should reverse its decisions and move forward in development of a reasonable and sound waiver process.

Create a Transparent Waiver or Similar Process Defined in Regulation

OHCA must detail the enforcement process — including a comprehensive list of reasonable factors for exceeding the target —in regulations so entities can understand what actions and circumstances will and won’t result in penalization. Moreover, given the dynamic health care and political landscape, OHCA must also include a catch-all provision that offers an opportunity for non-enumerated factors to be considered. Guidance on the kinds of engagement, analysis, and documentation that OHCA may require of or that entities may submit for assessment is also needed to help entities prepare for such a process. Lastly, OHCA must establish an appeal process so entities that disagree with OHCA’s determination have the opportunity to provide additional supportive documentation and further explanation.

Rely on Public Data to Streamline Reasonableness Determinations

When making enforcement decisions, OHCA should rely on public data as much as possible. Doing so will reduce the administrative burden on both the office and regulated entities. For factors that affect health care entities, the economy, or public health broadly, OHCA should look to preexisting public datasets that summarize statewide, regional, and industry-wide trends. For example, OHCA should look at public inflation indices to see whether elevated economy-wide cost growth should be considered as a reason many entities are exceeding the target. OHCA should also rely on public data wherever possible to examine individual entities’ cost drivers, such as by looking at hospitals’ Annual Financial Disclosure

Reports. Proprietary data should be a tool of last resort — and if it is used, OHCA must ensure it is protected.

Technical Assistance Should be Meaningful, Actionable, and Recognized

At the October Board meeting, OHCA staff provided details on what technical assistance would entail for entities that exceed the spending target. Specifically, OHCA defined technical assistance as simply providing a letter to the entity with high-level resources that they could use to come into compliance (e.g., research studies, literature, and cost-reducing strategies); it would not include OHCA directing an entity to implement specific changes to their operations. OHCA staff further indicated that the office would not assess entities' efforts to implement the technical assistance prior to moving to the next steps of the progressive enforcement process.

To ensure this step of the enforcement process is meaningful, OHCA should tailor technical assistance to the class and context of different health care entities. Accordingly, OHCA should provide entities with actionable and realistic steps, as well as time for entities to implement them. Moreover, health care entities' efforts to implement the technical assistance provided by OHCA should be recognized and accounted for in OHCA's determination of whether an entity is subject to stricter enforcement. This measured approach should be considered and adopted so entities have an earlier opportunity to make changes to meet OHCA's spending goals.

Public Testimony Must Enhance Mutual Learning, Not Provide an Opportunity for Political Theater

OHCA staff also provided details about public testimony at the October OHCA Board meeting. In particular, OHCA noted that compulsory public testimony (in-person or written testimony) from entities that exceed the target is an optional step in the progressive enforcement process, at the discretion of OHCA's director. Some board members noted that the public testimony is of interest to consumers, the public, and community members — and presents an opportunity for the public to engage with the entity that exceeded the target.

OHCA should be cautious in implementing this component so that it does not become spectacle, rather than an opportunity for mutual learning between the entity and OHCA board and staff. OHCA should establish parameters specifying when a health care entity would be required to testify and the types of information needed for testimony. Lastly, to truly have a progressive enforcement process, engagement in public testimony should be considered before proceeding to subsequent enforcement steps.

Conclusion

California's hospitals appreciate the opportunity to comment and look forward to continued engagement toward our shared goals of promoting affordability, access, quality, and equity in California's health care system.

Sincerely,



Ben Johnson
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cc: Members of the Health Care Affordability Board:

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