

## Addressing the Unique Challenges Posed by Local Law 97 for Hospitals and Health Care Systems

Hearing Before the  
New York City Department of Buildings  
February 16, 2021

Good morning. I am Susan C. Waltman, Executive Vice President, Legal, Regulatory, and Professional Affairs for the Greater New York Hospital Association (GNYHA). Thank you for the opportunity to appear today to comment on the New York City Department of Buildings' proposed rules regarding applications for adjustment of greenhouse gas emission limits for not-for-profit hospitals and healthcare facilities. GNYHA represents the interests of more than 50 hospitals and health systems in New York City, all of which are not-for-profit or publicly sponsored institutions.

**GNYHA Members and the Impact of Local Law 97:** GNYHA's members share the City's exceptionally important goal of reducing greenhouse gas emissions, and have, for many years, undertaken significant measures to reduce their energy usage and emissions. However, they also face unique challenges as they attempt to meet the requirements of Local Law 97, challenges that are dictated by their missions of providing safe patient care and protecting the health of their communities.

Local Law 97 recognizes these challenges in part by:

- Creating a Climate Advisory Board charged with making recommendations relating to reducing building emissions, including improved approaches to assessing performance, alternative compliance paths, carbon trading mechanisms, the economic impact of achieving the law's standards, *and methods for achieving emission reductions from hospitals while maintaining critical care for human health and safety.*
- Calling for the Climate Advisory Board *to convene a working group on hospitals* in furtherance of making the foregoing recommendations.
- Providing a process to apply for an *adjustment of annual greenhouse gas emissions for not-for-profit hospitals and healthcare facilities.*

GNYHA and its members appreciate the foregoing aspects of the law. However, our members have found that even those hospitals that have been the most successful at reducing emissions *will, in all likelihood, be unable to meet the targets set by the law and will therefore face significant penalties, a conclusion reached even before taking into account the impact of the pandemic.*

GNYHA outlines below the unique challenges hospitals face, a brief overview of efforts they have undertaken to reduce their emissions, and specific comments regarding the Department's proposed rulemaking.

**Unique Challenges Facing Hospitals:** Hospitals face unique regulatory and operational requirements that create considerable challenges to reducing their energy usage and emissions. These challenges, coupled with the efforts already undertaken by New York City’s hospitals, make it nearly impossible for them to meet the emission limits set forth in Local Law 97.

- **Complex Regulatory Framework:** Hospital construction and operations are subject to myriad local, state, and Federal regulatory and accrediting body requirements. Those requirements cross-reference numerous professional organizations’ construction and design codes and standards aimed specifically at hospital construction.
- **Strict Ventilation Standards Related to Infection Prevention:** Hospitals are required to comply with strict ventilation and filtration standards that are critical to infection prevention and to ensuring the health, safety, and comfort of patients, workers, and visitors as well as the integrity of research operations. These requirements have become even more important, and have been extended to additional locations in hospitals as they have been required to respond to the demands of the pandemic and its related surge of patients.
- **Varied But Constant Energy Needs:** Each clinical area of a hospital has specific needs for temperature, humidity, pressure control, and air changes, and most requirements must be met 24/7 each and every day throughout the year.
- **Myriad Types of Functional Space and Requirements:** One example of such strict operational requirements for hospitals is ANSI/ASHRAE/ASHE Standard 170-2017 entitled Ventilation of Health Care Facilities. This one standard lists *88 different “function of space” categories in hospitals, many of which must meet seven different requirements* with respect to pressure relationships with adjacent areas, air changes, air exhaust, relative humidity, and relative temperature.
- **Diversity of Functional Space:** Among the different functional spaces are rooms for patients with airborne infectious diseases, critical care areas, rooms for patients recovering from bone marrow or stem cell transplants, surgical areas, cancer treatment areas, laboratories, pharmacies, anesthesia gas storage, areas for sterilization, soiled linen rooms, and dietary, each with their own exacting ventilation, temperature, and energy requirements.
- **Energy Demands of Hospital Equipment:** Hospitals have many types of medical equipment that are often in constant use and that consume significant energy, including magnetic resonance imaging (MRI), CT scan, and other imaging equipment.
- **Resiliency Requirements:** Hospitals are required to be resilient and have back-up systems in the event of emergencies such as Superstorm Sandy. As a result, many hospitals have built co-generation plants for both energy efficiency and resiliency purposes. However, these very plants negatively affect hospitals’ ability to comply with the law’s emission standards.
- **Construction Requirements:** Hospitals are subject to strict requirements for protecting patients and staff during construction, thus making construction difficult to undertake.
- **Wide Diversity in Types of Hospitals and Energy Needs:** Each hospital’s energy needs are unique. A complex academic medical center with a full array of clinical, research, and laboratory space has very different energy needs in general and per square foot than a smaller, community hospital.

- **The Pandemic and Increased Energy Needs:** The pandemic has dramatically increased hospitals' energy requirements due to the need for enhanced ventilation, mechanical filtration, and pressurization of spaces to maximize infection control. Hospitals have also had to increase the areas of their facilities subject to these enhanced requirements, given the need to add new patient care areas to accommodate increased numbers of potentially infectious patients and to ensure hospitals' ability to expand rapidly pursuant to the State's Surge and Flex regulations. Finally, hospitals have been required to more consistently occupy space that had only been intermittently occupied in the past to accommodate social distancing requirements.

**Hospital Efforts to Reduce Energy and Emissions:** Despite these unique challenges, hospitals in New York City have been dedicated to, and have devoted considerable efforts to reducing their emissions. Many hospitals have participated quite successfully in the City's Carbon Challenge, which was launched in 2007. *Many hospitals had already met or, at least pre-pandemic, were close to meeting the City's initial goal of reducing their emissions by 30 percent over 10 years. Some had also signed on to reducing their emissions by 40 percent by 2030, and several had aimed to meet the even more aggressive goal of reducing emissions by 50 percent by 2025.*

Individually and as a group, hospitals in New York City are dedicated to sustainability, energy reduction, and reducing greenhouse gas emissions as part of their missions. Even as they grapple with the demands placed on their facilities by the pandemic, hospitals continue to try to reduce their energy consumption where possible, improve their energy efficiency, and promote energy conservation in the workforce.

As noted, despite the strides hospitals have made and continue to make, *many of the most successful hospitals have concluded they will, in all likelihood, be unable to meet the targets set by Local Law 97 and will inevitably face unavoidable penalties that could further undermine their ability to comply with the law.*

**Proposed Adjustment to Hospital Emission Limits:** The Department of Buildings' proposed rulemaking is designed to implement a provision of Local Law 97 that GNYHA understands was intended to be beneficial to, and supportive of not-for-profit hospitals. The Department's Statement of Basis and Purpose reinforces this understanding by stating that the adjustment is intended to increase the emission limits for qualifying hospitals and health care facilities and to extend the timeframe for them to come into compliance. Unfortunately, the adjustment offered by Local Law 97 does not seem to meet that goal.

The underlying provision offers an alternative approach to calculating the emission limits for buildings owned by, or leased to not-for-profit hospitals and health care facilities. For calendar years 2024 through 2029, the adjustment would permit the use of a limit that is 85 percent of a building's calendar year 2018 emissions. For calendar years 2030 through 2034, the adjustment would permit the use of a limit that is 70 percent of a building's calendar year 2018 emissions. To qualify for the adjustment, an applicant must submit an application no later than July 21, 2021.

**Need for More Time to Decide Whether to Apply:** While GNYHA members appreciate the intent of the provision, they have expressed two concerns with respect to the adjustment. The first is that *hospitals do not have sufficient information to make an informed decision whether to apply for the*

*adjustment by the July 21 due date.* There are many variables that could affect a hospital’s election of the adjustment, such as what the market might be for renewable energy credits, what will be permitted in terms of carbon trading, and what will be the mix of the grid over time. Since these factors are unknown, hospitals are not able to make an informed decision with respect to the proposed adjustment by July 21, 2021.

We recognize that the time frame for applying for the adjustment is set forth in Local Law 97. However, we respectfully request that the Department *exercise any amount of administrative discretion it might have to extend the application deadline as long as possible and/or support a modification of the due date set forth in the law.*

***Need for Revised Adjustment:*** The second comment made by GNYHA members is that the adjustment, to the extent it can be evaluated, does not seem to provide the relief intended. In fact, one member indicated that the adjustment seems to *increase* penalties for the period 2024 through 2029, while it may reduce, to some extent, penalties for the period 2030 through 2034. Others have indicated the provision affords no relief at all except with respect to several non-hospital buildings.

Given this circumstance, GNYHA respectfully *requests to work with the Department and/or the Climate Advisory Board to develop a revised adjustment, one that will provide the relief that seems to have been intended and that will in fact increase the emission limits and extend the timeline for compliance as contemplated.* We appreciate that we are requesting a material change to the adjustment set forth in Local Law 97. However, GNYHA believes the adjustment should be one that affords true relief to not-for-profit hospitals as intended by the law and one that recognizes the strides hospitals have already made toward the City’s goals. We are hopeful the Department will support the development of a revised adjustment.

Whatever the adjustment may be, however, GNYHA *requests that hospitals have the option to select one or both of the time periods set forth in Local Law 97 when it is time to apply.* As indicated, we recognize that the adjustment is legislative in nature, but we seek the Department’s support for hospitals having the option to choose only one or both of the relevant time periods contained in the law.

**Importance of Convening the Law’s Working Group on Hospitals:** Local Law 97 calls for the City’s Climate Advisory Board to convene a working group on hospitals, given the unique issues facing hospitals. GNYHA has put forward the names of individuals representing each of the City’s major health systems and believes those individuals are best equipped to make recommendations on how hospitals can meet the City’s goals, while at the same time not undermining their important mission of providing safe patient care and promoting the health of their communities. GNYHA therefore respectfully requests that the Climate Advisory Board convene the requisite working group on hospitals as soon as possible in order to maximize their input into the City’s planning process, including the not-for-profit hospital adjustment that is the subject of today’s hearing.

**Conclusion:** Thank you again for the opportunity to appear today. We look forward to working with the City as it undertakes to meet its important goal of reducing greenhouse gas emissions on behalf of all of us.