

Regulatory Analysis Form		This space for use by IRRC IRRC Number: 1872
(1) Agency Department of Public Welfare Office of Income Maintenance Bureau of Policy Division of Medical Assistance Eligibility		
(2) I.D. Number (Governor's Office Use) 14-421		
(3) Short Title Lump Sum		
(4) PA Code Cite 55 Pa. Code Chapters 140 and 181	(5) Agency Contacts & Telephone Numbers Primary Contact: George L. Hoover 772-7809 Secondary Contact:	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking Final Order Adopting Regulation Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. These proposed regulations amend the eligibility provisions for the Healthy Horizons Program for the Elderly/Disabled in Chapter 140, Subchapter B, at Section 140.291(c) and (d) and the Medical Assistance (MA) Income regulations in Chapter 181, Subchapter A, General Provisions for MA Income Common to all Categories of MA, at Section 181.31(d). Current regulations state that a lump sum is treated as a resource unless it is beneficial to the client to treat it as income. These proposed regulations require that when a lump sum has been treated as income in the month of receipt, for purposes of MA eligibility, any balance of the lump sum remaining in subsequent months is treated as a resource. This change does not affect SSI-related, AFDC-related or GA-related children under 21 years of age or families with children under 21 years of age as resources are excluded for these groups. This proposed regulation provides that a client who chooses to treat a lump sum as income is no worse off or better off under this proposed regulation change than another client who chooses to treat lump sum as a resource from the time it was received, pursuant to Section 140.291(b) and 181.31(b). MA income and resource eligibility rules are patterned after the rules for the corresponding Aid to Families with Dependent Children and Supplemental Security Income Cash Assistance Programs.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Title XIX of the Social Security Act, 42 U.S.C. §1396a(a)(17) and 42 U.S.C. §1396a(r)(2) Public Welfare Code, 62 P.S. §403(b)		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Title XIX of the Social Security Act (42 U.S.C. §1396a(a)(17)) requires that we have an income and resource methodology. 42 U.S.C. §1396a(r)(2) provides that this methodology may be less restrictive than the cash methodology but may not be more restrictive.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The change in the treatment of a lump sum will result in a savings of State dollars. These regulations will permit the denial of MA eligibility for MA applicants who have a balance of a lump sum remaining which exceeds allowable resource limits. These individuals have available resources which can be used to meet their medical and other living needs. These regulations will treat MA applicants/recipients with excess resources resulting from a lump sum the same as applicants and recipients whose resources exceed the limits for any other reason.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Not applicable.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

These proposed amendments are intended to establish equitable treatment between clients who have excess resources because of a lump sum and clients who have excess resources for any other reason.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Individuals with excess resources will remain ineligible for MA until their resources meet the limits for MA eligibility.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All MA applicants and recipients who are living in the community or receiving institutional care and who receive a lump sum will be affected by the proposed regulation change with the exception of SSI-related, AFDC-related, and GA-related children under 21 years of age or families with children under 21 years of age as resources are excluded for these groups.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Written public comment is invited within 30 days after publication of the regulations in the Pennsylvania Bulletin.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The purpose of this regulation is to change the treatment of a lump sum payment when determining eligibility for Medical Assistance (MA). This change will require that any balance remaining of a lump sum that has been treated as income in the initial calendar month of MA eligibility determination is treated as a resource in subsequent months. Currently, regulations permit individuals who receive sizable lump sum to qualify for MA after one month of MA ineligibility as the remaining amount of the lump sum is excluded as a resource. This change applies to all categories of MA including Healthy Horizons.

These regulatory changes will become effective upon publication in the Pennsylvania Bulletin as final rulemaking. Fiscal Year 1997-1998 savings are estimated in the amount of \$0.182 million (\$0.086 million in State funds). For Fiscal Year 1998-1999, annualized savings are estimated in the amount of \$0.276 million (\$0.130 million in State funds).

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

(Dollar Amounts in Thousands)

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government	(\$86)	(\$130)	(\$131)	(\$132)	(\$134)	(\$135)
Total Savings	(\$86)	(\$130)	(\$131)	(\$132)	(\$134)	(\$135)
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the estimates listed above were derived.

The estimate is based on the approximate number of recipients who would become ineligible for MA as a result of this change in the treatment of a lump sum multiplied by the average monthly medical assistance expenditures multiplied by the estimated length of time to re-establish eligibility (3 months).

Regulatory Analysis Form

(20b) Provide the past three years expenditure history for programs affected by the regulation.

(Dollar Amounts In Thousands)

Program	FY -3	FY -2	FY -1	Current FY
MA-Outpatient	\$722,422	\$792,293	\$798,836	\$570,974
MA-Inpatient	\$550,452	\$452,180	\$436,941	\$306,906

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

These regulations will treat MA applicants/recipients with excess resources resulting from a lump sum payment the same as applicants and recipients whose resources exceed the limits for any other reason.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**Fiscal Note - Change in Treatment of a Lump Sum
(Effective September 1, 1997)**

FY 97-98

Estimated savings	Total \$	Federal \$	State \$
Medically Needy	(\$74,000)	(\$39,409)	(\$34,591)
Categorically Needy	(\$108,000)	(\$57,515)	(\$50,485)
	<u>(\$182,000)</u>	<u>(\$96,187)</u>	<u>(\$85,813)</u>
Inpatient 125	(\$67,099)	(\$35,733)	(\$31,366)
Outpatient 120	(\$114,901)	(\$61,191)	(\$53,710)

FY 98-99

Inpatient 125	(\$103,164)	(\$55,079)	(\$48,085)
Outpatient 120	(\$172,352)	(\$92,019)	(\$80,333)
	<u>(\$275,516)</u>	<u>(\$145,610)</u>	<u>(\$129,906)</u>

FY 99-00

Inpatient 125	(\$105,743)	(\$56,456)	(\$49,287)
Outpatient 120	(\$172,352)	(\$92,019)	(\$80,333)
	<u>(\$278,095)</u>	<u>(\$146,973)</u>	<u>(\$131,122)</u>

FY 00-01

Inpatient 125	(\$108,387)	(\$57,868)	(\$50,519)
Outpatient 120	(\$172,352)	(\$92,019)	(\$80,333)
	<u>(\$280,739)</u>	<u>(\$148,371)</u>	<u>(\$132,368)</u>

FY 01-02

Inpatient 125	(\$111,097)	(\$59,315)	(\$51,782)
Outpatient 120	(\$172,352)	(\$92,019)	(\$80,333)
	<u>(\$283,449)</u>	<u>(\$149,803)</u>	<u>(\$133,646)</u>

FY 02-03

Inpatient 125	(\$113,874)	(\$60,797)	(\$53,077)
Outpatient 120	(\$172,352)	(\$92,019)	(\$80,333)
	<u>(\$286,226)</u>	<u>(\$151,270)</u>	<u>(\$134,956)</u>

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Pennsylvania's regulations are comparable with other states' requirements. New Jersey and Maryland treat lump sum as income. The lump sum is added to other available income to arrive at the number of months of ineligibility for medical assistance. Ohio treats lump sum as income in the month received and as a resource in the subsequent month. If the lump sum exceeds the resource limitation, the excess resource amount is equally divided as an available resource for the number of persons in the medical assistance group to arrive at the number of months of ineligibility. MA is authorized when the lump sum is spent. There are no restrictions on how the lump sum has to be spent.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

These regulations will not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated effective date of the regulation is the date published in the Pennsylvania Bulletin as final rulemaking.

(31) Provide the schedule for continual review of the regulation.

These regulations will be reviewed through the Department's Quality Control and Corrective Action review process which are monitored by the Federal Department of Health and Human Services.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

97
RECEIVED
LEGISLATIVE REFERENCE BUREAU

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: <u>[Signature]</u> (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Department of Public Welfare</u> (Agency)</p> <p>LEGAL COUNSEL: <u>Jean E. Graybill</u></p> <p>DOCUMENT/FISCAL NOTE NO. <u>14-421</u> (DPW-OIM-02-92-003)</p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>[Signature]</u></p> <p>TITLE: <u>Secretary of Public Welfare</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>[Signature]</u></p> <p><u>6-10-97</u> Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF INCOME MAINTENANCE
Bureau of Policy

[55 Pa. Code Chapter 140 (Subchapter B)]
Eligibility Provisions for the Healthy Horizons
Program for the Elderly/Disabled

[55 Pa. Code Chapter 181]
Medical Assistance Income

STATUTORY AUTHORITY

Notice is hereby given that the Department of Public Welfare, under the authority of the Public Welfare Code, §403(b), Act of June 13, 1967, P.L. 31, No. 21, (62 P.S. §403(b)), intends to amend the regulations as set forth in Annex A to this notice.

PURPOSE

The purpose of this amendment is to change how the receipt of a lump sum is treated when determining eligibility for medical assistance (MA) in 55 Pa. Code Chapters 140, Subchapter B, and 181. Current regulations state that a lump sum is treated as a resource unless it is beneficial to the client to treat it as income. This change will require that where a lump sum has been treated as income in the month of receipt, any balance remaining in subsequent months will be treated as a resource. This change applies to all categories of MA, including Healthy Horizons. This change provides that a client who chooses to treat a lump sum as income is no worse off under this proposed regulation change than another client who chooses to treat lump sum as a resource from the time it was received. Based on the notice of rule change published at 23 Pa.B. 25 (June 19, 1993) effective June 1, 1993, the resources of a child under 21 years of age or of a family that contains children under 21 years of age are excluded. Therefore, it will benefit children under 21 years of age and families with children under 21 years of age to treat the lump sum as a resource which is then excluded.

BACKGROUND

Effective November 1, 1988, the Department adopted final regulations patterned after the rules for the corresponding Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) Cash Assistance Programs except for the treatment of lump sum. The AFDC Cash Assistance Program treats lump sum under a special lump sum rule which provides for a period of ineligibility. The SSI Cash Assistance Program treats a lump sum as a resource. The disparity of treatment of a lump sum in the cash assistance programs led to the flexibility in the treatment of a lump sum for the MA Program. The individual currently has the choice of treating a lump sum as a resource, unless it is more financially helpful to the individual to have it treated as income. If the lump sum is counted as income, any balance of the lump sum remaining in subsequent months is not considered a resource under existing regulations.

As a result of this flexibility, the regulations provide a special resource exclusion for the remaining lump sum. The exclusion enables an individual to continue to receive MA benefits even though resources, including funds remaining from the lump sum, may be substantially in excess of the resource limit. Due to the fact that individuals with substantial lump sum benefits are being determined eligible for MA, even if there is a balance of the lump sum remaining which exceeds the MA resource limits, the Department is revising the regulations to specify that lump sum payments retained beyond the month of receipt are treated as a resource. An

individual still has the choice of deciding whether to have the lump sum treated as a resource or as income in the month of receipt. However, any portion remaining in subsequent months will be treated as a resource along with all other countable resources subject to the maximum MA resource limit.

A notice of rule change published at 23 Pa.B. 25 (June 19, 1993) effective June 1, 1993 declared that the resources of a child under 21 years of age or of a family that contains children under 21 years of age are excluded. Title 55 Pa. Code does not currently reflect sections 178.84 and 178.163 as these regulations have not yet been promulgated. It is anticipated that they will be promulgated by the time this regulation regarding treatment of lump sum is published as final rulemaking.

NEED FOR REGULATION

These regulations are needed to establish equitable treatment between clients who have excess resources because of a lump sum and clients who have excess resources for any other reason, by changing the requirements for the treatment of lump sum income in 55 Pa. Code Chapters 140, Subchapter B, and 181.

SUMMARY

Treatment of lump sum payment (§140.291(c), (d) and (d)(3))

The revision to this section counts as a resource the balance of the lump sum remaining subsequent to the calendar month in which the lump sum is received and is counted as income for the applicant/recipient of the Healthy Horizons Program. The content of subsection (d) is no longer applicable. The contents of the old (d)(1) and (2) are moved to (c)(1) and (2). The old paragraph (d)(3) is the revised subsection (d). Subsection (d) includes reference that resources are excluded for children under 21 years of age and families with children under 21 years of age based on the notice of rule change published at 23 Pa.B. 25 (June 19, 1993) effective June 1, 1993. We anticipate Sections 178.84 and 178.163 referenced in the Notice of Rule Change are to be added to 55 Pa. Code before the changes in Annex A are published as final rulemaking.

Treatment of lump sum payment (§181.31(d))

The revision to this section counts as a resource the balance of the lump sum remaining subsequent to the calendar month in which the lump sum is received and is counted as income. This applies to an applicant/recipient of Supplemental Security Income (SSI)-related and General Assistance (GA)-related categories of the Categorically Needy Nonmoney Payment (NMP) and Medically Needy Only (MNO) MA Programs unless the resource is excluded based on the notice of rule change published at 23 Pa.B. 25 (June 19, 1993) effective June 1, 1993.

AFFECTED PERSONS AND ORGANIZATIONS

This amendment affects all applicants and recipients of MA, living in the community or residing in an institution, who receive a lump sum.

ACCOMPLISHMENTS/BENEFITS

This proposed amendment will change how the balance of a lump sum remaining subsequent to the month of receipt is treated. The change would treat as a resource the balance of a lump sum remaining subsequent to the month it was received and treated as income for MA eligibility purposes. This change denies MA eligibility for those individuals with a sizeable balance of a lump sum after only one month of MA ineligibility. These individuals could qualify for MA once their resources and income are within allowable limits.

FISCAL IMPACT

Commonwealth

It is anticipated that implementation of these proposed regulations will result in savings to the Commonwealth during Fiscal Year 1995-1996 of approximately \$0.224 million (\$0.102 million in State funds). Annual savings for Fiscal Year 1996-1997 are estimated in the amount of \$0.282 million (\$0.129 million in State funds).

Private Sector

There are no anticipated costs for the private sector.

PAPERWORK REQUIREMENTS

This amendment does not require additional forms or reports.

EFFECTIVE DATE

This amendment will be effective upon publication in the Pennsylvania Bulletin as final rulemaking.

SUNSET DATE

No sunset date is applicable. The Department continuously reviews the Medical Assistance Program and regulations through the Federally monitored Quality Control process. Also, the Federal Health Care Financing Administration staff conducts audits periodically on specific aspects of the Medical Assistance Program.

PUBLIC COMMENT PERIOD

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulation to the Department of Public Welfare, Mrs. Patricia H. O'Neal, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, Pennsylvania 17120, telephone (717)787-4081 within 30 calendar days after the date of publication of this Notice in the Pennsylvania Bulletin. All comments received within 30 calendar days will be reviewed and considered in the preparation of the final regulation. Comments received after the 30 day comment period will be considered for any subsequent revision of this regulation.

Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (Voice users).

REGULATORY REVIEW ACT

Under §5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L.. 73, No. 19) (71 P.S. §745.1 - 745.15), the agency submitted a copy of this proposed regulation on to the Independent Regulatory Review Commission and to the Chairmen of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the agency by *Sept 1, 1997*. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation of objections raised, by the agency, the General Assembly and the Governor.

Cc: Legislative Reference Bureau

ANNEX A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS

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Subchapter B. ELIGIBILITY PROVISIONS FOR THE HEALTHY
HORIZONS PROGRAM FOR THE ELDERLY/DISABLED

* * * * *

TREATMENT OF LUMP SUM PAYMENT[S]

140.291. Treatment of lump sum payment[s].

* * * * *

(c) If the lump sum is treated as income, it is counted as income in the calendar month received.

[(d) A balance remaining of the lump sum payment subsequent to the calendar month the lump sum payment was received and counted as income is not considered a resource to the applicant/recipient.]

(1) AN[E]arned lump sum [payments] such as delayed wages, bonuses and EITC IS [are] treated as earned income and IS [are] added to other earned income received in the calendar month. The deductions listed under §140.282 (relating to deductions from earned income) are applied to determine countable net earned income.

(2) AN[U]nearned lump sum [payments] such as cash prizes, cash lottery winnings, life insurance benefits, cash inheritances and personal injury IS [are] treated as unearned income and IS [are] added to other unearned income received in the calendar month. The deductions listed under §140.281 (relating to deductions from unearned income) are applied to determine countable net unearned income.

[(3)] (d) The balance [remaining] of the lump sum [payment] REMAINING subsequent to the calendar month the lump sum [payment] was received and counted as [earned income or unearned] income as described in subsection (c) is [not] considered a resource to the applicant/recipient or the spouse of the applicant/recipient UNLESS THE RESOURCE IS EXCLUDED UNDER §§178.84 AND 178.163 (RELATING TO CHILDREN UNDER 21 AND FAMILIES WITH CHILDREN UNDER 21 EXCLUSION).

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Subpart D. DETERMINATION OF NEED AND AMOUNT OF
ASSISTANCE

CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY
NEEDY NMP-MA AND MNO-MA

Subchapter A. GENERAL PROVISIONS FOR MA INCOME COMMON
TO ALL CATEGORIES OF MA

* * * * *

TREATMENT OF LUMP SUM PAYMENT COMMON TO ALL
CATEGORIES OF MA

181.31. Treatment of lump sum PAYMENT.

* * * * *

(d) The balance [remaining] of the lump sum [payment] **REMAINING** subsequent to the calendar month the lump sum [payment] was received and counted as [earned or unearned] income as described in subsection (c) is [not] considered a resource to the applicant/recipient **UNLESS THE RESOURCE IS EXCLUDED UNDER §178.84 AND 178.163 (RELATING TO CHILDREN UNDER 21 AND FAMILIES WITH CHILDREN UNDER 21 EXCLUSION).**

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TRANSMITTAL SHEET FOR REGULATORY

PLEASE RETURN TO:
INDEPENDENT REGULATORY REVIEW COMMISSION
14TH FLOOR, HARRISTOWN II

I.D. NUMBER: 14-421

97 JUL 20 11:04

SUBJECT: ELIGIBILITY PROVISIONS FOR THE HEALTHY HORIZONS
PROGRAM FOR THE ELDERLY/DISABLED
MEDICAL ASSISTANCE INCOME

AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/23/97	<u>Rebecca Geary</u>	HOUSE COMMITTEE ON HEALTH & WELFARE
7/23/97	<u>D. Matthews</u>	
7/23/97	<u>Debra Ector</u>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
7/23	<u>D. Weber</u>	
7/23	<u>J. Melnick</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
7/23/97	<u>Jane E. Cate</u>	LEGISLATIVE REFERENCE BUREAU

July 2, 1997